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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

No. 74-66

**WILLIAM HETTLEMAN and PALMER D. EDMUNDS,**

*Petitioners,*

vs.

**THE CHICAGO LAW INSTITUTE, et al. and THE COUNTY OF COOK, ILLINOIS,**

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioners William Hettleman and Palmer D. Edmunds pray that a writ of certiorari issue to review the judgments of the Illinois Supreme Court, entered September 22, 1970, in Case No. 41,807, on direct appeal from a nisi

judge's orders denying their petition to vacate a July 7, 1966 summary judgment and July 13, 1966 decree predicated thereon, and entered January 30, 1974, in Case No. 46,360, on direct appeal from the transferee Appellate Court's order, entered September 13, 1973, in Case No. 55447, granting substantially the same motion of the appellees to dismiss the appeal which the said September 22, 1970 Illinois Supreme Court judgment had already denied categorically.

## OPINIONS BELOW

Appendix A is nisi Judge O'Brien's opinion of July 7, 1966 in 65 CH 6863 granting summary judgment and a decree of July 13, 1966 thereon which petitioners sought to vacate as null and void by their petition filed on July 11, 1968 in the office of the Clerk of the Circuit Court of Cook County. Appendix AA is said decree. Appendix AAA is a denied petition to disqualify Judge O'Brien. Appendix AAAA contains pertinent excerpts from petitioners' Answers. They are appended in accordance with this Court's Rule 23(i) as bearing on said opinion and decree. They decided federal questions in a way probably not in accord with applicable decisions of this court. The Reasons for Allowing the Writ section will show that the opinion is quite flagrant of universal law, and so result-oriented, as to have denied petitioners their guaranteed rights under the contract clause, Art. IV, sec. 2, the 5th

amendment protection against taking private property for a public use without any compensation and deprivation of property and liberty without due process in violation of the 5th and 14th amendments.

There has been no reviewing court opinion, unless it be the Supreme Court of Illinois order of September 22, 1970. This may be the appropriate place, nevertheless, to call this Court's attention to the misprisions of the Clerk of the Supreme Court of Illinois out of which Gilbert & Sullivan would have made a most hilarious comedy. They would be funny to the petitioners too, but for the resulting state action denying them a constitutional review, and dismissal of their appeal by the Illinois Appellate Court, First District, suggesting possible remand by this Court.

That Clerk furnished 3 different versions of the Illinois Supreme Court's order of September 22, 1970: (1) Appendix B is the order he sent petitioners on the same day entered. (2) Appendix C is the one he sent to the Appellate Court on October 15, 1970. (3) Appendix D is the one he sent petitioners on April 16, 1974 for use to show this Court the jurisdictional requirements. Petitioners immediately called this mistake to his attention, and received Appendix B which corresponded exactly with the one they received about September 23, 1970 from him.

It will be noted that Appendix C made no reference to the Illinois Supreme Court's consideration of the constitutional questions or to its categorical denial of appellees' motion to dismiss petitioners' direct appeal. On May 1, 1973, appellees made the same motion substantially in the Appellate Court. Their affidavit for leave to file in-

dicated that Appendix C carried with it a direction to the Appellate Court to adjudicate their said motion filed on June 22, 1970 in the Illinois Supreme Court. Appendix E is the September 13, 1973 order of the Appellate Court, referring to said affidavit and granting the motion to dismiss petitioners' appeal.

The appellees' said motion in the Appellate Court was a collateral attack on the Supreme Court's ruling forbidden by its Rule 365:

> "APPEAL TO WRONG COURT (a) Effect. The taking of an appeal to either the Supreme Court or the Appellate Court shall not be deemed a waiver of the right to present any issue to the appropriate court. A matter decided by either court shall not be subject to collateral attack that it should have been decided by the other."

This matter will be treated further under Reasons for Allowing the Writ.

## JURISDICTION

A. The following certified orders:

1. Appendix B. The Illinois Supreme Court order of September 22, 1970 transferring cause No. 41807 to the Appellate Court, First District.

2. Appendix E. The Illinois Appellate Court order of September 13, 1973 granting appellees' motion to dismiss appeal "per affidavit filed herein."

3. Appendix F. The Illinois Supreme Court order of January 30, 1974 denying petition for leave to appeal to it, in Case No. 46360.

4. Appendix G. The Illinois Supreme Court order of March 21, 1974 denying motion to reconsider its order of January 30, 1974.

5. Appendix H. The Illinois Supreme Court order of March 11, 1974 recalling and staying its mandate.

B. Appendix I. Mr. Justice Rehnquist's order of June 10, 1974 extending time for filing petition for certiorari to and including August 5, 1974.

C. *Parker* v. *Illinois*, 333 U.S. 571, 575 requirement was met.

D. 28 U.S.C.A. sec. 1257(3) permits review by certiorari.

## SUBSTANTIAL CONSTITUTIONAL QUESTIONS PRESENTED

1. Whether a judge, who as State Senator introduced and piloted a bill successfully, as part of a scheme to take one of the largest and most substantial private law libraries in the country to create a ready-made, free public library in the largest county in the state without any compensation, and who shortly thereafter was elected a judge of that county, and sat as chancellor in a suit filed soon after his such election to effectuate the purpose of such legislation, and refused to recuse himself for conflict of interest upon proper petition for him to do so, or of his own motion, so tainted the judicial system as to merit reversal of his summary judgment and decree in that suit?

2. Whether a summary judgment and decree, entered by a chancellor dissolving, in effect, a corporation's special charter, absent the State Attorney General's information or proof that it was then insolvent and its creditors needed such protection, violated the contract and "taking" clauses?

3. Whether a nisi judge's summary dismissal of petitioners' proper petition, to vacate said summary judgment and decree, filed but whose time had not come for calling it up for adjudication, when respondents had failed to file a formal appearance, to plead or to join issue, violated petitioners' guaranteed due process and equal protection of the law?

## ILLINOIS CONSTITUTIONAL PROVISIONS, STATUTES

1965 Ill. Rev. Stats. 1870 Ill. Const., as amend. Art. II. Bill of Rts. at pp. 11-12. Sec. 1. Inherent and Inalienable Rts. Sec. 2. Due Process (to which the 1970 Ill. Const., 1971 Ill. R.S. added "or be denied the equal protection of the law"). Sec. 13. Right of Eminent Domain. Private property shall not be taken or damaged for public use without just compensation (to which the 1970 Const., sec. 15 added "Such compensation shall be determined by a jury as provided by law." Sec. 19 (now sec. 12 in 1970 Const.) Every person ought to find a certain remedy in the laws for all injuries and wrongs he may receive.

Art. VI. The Judiciary. Sec. 7 (now sec. 6 in the 1970 Const.). Appellate Court-Jurisdiction. Appeals from final judgments of a Circuit Court are a matter of right. Sec. 9. Circuit Courts-Jurisdiction (now the same section in the 1970 Const.) Circuit Courts shall have original jurisdiction of all *justiciable matters.*

1971 Ill. Rev. Stats. 1970 Const. Art. VI. The Judiciary, at p. 19. Sec. 4. Supreme Court Jurisdiction. (a) Appeals from the Appellate Court to the Supreme Court are a matter of right, if a question under the Constitution of the United States or of the State arises for the first time in and as a result of the action of the Appellate Court . . . The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review. (See also Appendix J)

## STATEMENT OF THE CASE

On July 23, 1974 the Clerk of the Appellate Court finally delivered to counsel his certified records in the trial court on direct appeal to the Illinois Supreme Court in 41807, on order for 6 weeks, for him to mail, and the single volume of the proceedings in the transferee Appellate Court in 55447. Counsel numbered each page of the latter in pencil in the lower left hand corner.

Respondents filed a Complaint, on December 10, 1965, in the Circuit Court of Cook County, Illinois, Chancery Division, where it was docketed as 65 CH 6863. It alleged that the Illinois Legislature granted the The Chicago Law Institute a special charter on February 18, 1857 (attached thereto as Exhibit A) for the primary purpose of creating a law library for its members in Cook County; that its by-laws (attached thereto as Exhibit B) required, as a condition of membership therein, that the application, accompanied by $100, be approved by the Institute's Executive Committee; that, upon his admission, the applicant must pay assessments annually for its support; that he observe the rules and remain in good standing at the Bar; that the Institute's principal support came from these assessments; that, at a special meeting of the Institute members duly called on June 18, 1965, resolutions were submitted to them to donate its library collection to the respondent, Cook County, to dissolve the corporation, and to authorize the Executive Committee to file suit in the Institute's name, and at its expense, in chancery to approve the action of the mem-

bers in voting for the said resolutions, and that said members voted against said resolutions almost unanimously; that Institute members, Arkema and O'Brien, represented those who favored the resolutions and that a number of named defendants, including named defendant Hettleman, also Institute members, opposed the resolutions; that the Chancellor should exercise *cy pres* to transfer the Institute's library and other assets, to the defendant Cook County, (not an educational or charitable corporation) since otherwise *all* the Institute's assets would be totally lost, destroyed and dissipated; that the Institute was an educational and charitable corporation, or charitable trust, and that the plaintiffs were under an enforceable duty to file the suit which prayed the chancellor's approval of a purported contract (attached thereto as Exhibit C), executed by the Institute's president, pursuant to an alleged authority given him by the Institute's Executive Committee on or about November 12, 1965, or November 19, 1965, and by the president of defendant Cook County, on December 6, 1965, said contract incorporating the terms of the foregoing resolutions defeated on said June 18, 1965.

The Answers of Hettleman et al., (App. AAAA) admitted all the foregoing allegations, except that the Institute was an educational and charitable corporation, or charitable trust, and averred that it was a private, not-for-profit, corporation, under a special charter which provided no State visitatorial rights, dependent primarily on annual assessments from its members for acquisition of books and with which to pay the expenses of a net-cost, operation, that it had never received a penny from the City, County, or State of Illinois; that its facilities were

not available to a limitless, uncertain, indeterminate general public, regardless of their inability to pay for such use, which, unless it had professional training, could get no more direct benefit from a law library than it could from a medical one; that a conspiracy had been hatched from 1962 by Mayor Richard J. Daley and others of the dominant political party to acquire the Institute's approximately 100 year old law library collection of over 150,000 volumes, worth about $2,500,000, without any compensation fixed by a jury, as provided by the Illinois Eminent Domain Act (App. J), in order to create a ready-made free, public law library to permit the collection of a $1.00 tax on every party to a suit filed in Cook County, for certain obvious purposes (an estimated $3,000,000 has been collected since September, 1963 to date); that the library collection was unencumbered, and its current assets of cash and securities were such that only minor current liabilities for payroll, books and periodicals were against them; that, at Mayor Daley's behest, his floor leader in the Illinois Senate, Donald J. O'Brien, had introduced House Bill 1199 and saw that it was passed, to effectuate the scheme (Exhibit A attached to the Answer was the 1963 so-called Harrington Report quoted in App. AAA, the Petition to Disqualify Judge O'Brien, which details his nexus as a State Senator).

Senator Donald J. O'Brien was elected the following year, in 1964, as a judge of the Circuit Court of Cook County, and was assigned immediately to the Chancery Division. 65 CH 6863 was sent to him. He refused to recuse himself, on proper petition for change of venue, or on his own motion, on the ground that he could be impartial, since he was not an Institute member! He sug-

gested from the Bench that plaintiffs file a motion for summary judgment, telegraphing his result-oriented decision. He excluded improperly, from the evidence, denying him a fair chance to be heard, defendant Hettleman's timely filed and proper (App. J, Ill. R.S. ch. 110, §57(3)) counter-affidavit, which, as did the Answer (App. AAAA) pointed out the many triable issues of fact. Had Judge O'Brien read the Hettleman counteraffidavit (Trial Court Record, certified by Appellate Court, at C9-40), he would have been precluded from entering the order granting the plaintiffs' motion for summary judgment on which he predicated his decree on July 13, 1966 approving the said contract, Exhibit C, attached to the Complaint. Though proper notices of appeal had been promptly filed, on July 14, 1966 and August 12, 1966 and contract C stated no title could pass until this Court's review, Cook County seized the law library on August 15, 1966, and locked out petitioners and all members from Institute's quarters on the 10th floor of the Cook County Building, said 11th decennial lease with Cook County not expiring till April 4, 1968 (App. AAAA Exhibit B is said lease).

Breakstone, an Institute member, was counsel pro se, and for other intervening and named defendants, including petitioner Hettleman who asked him to withdraw as his attorney after the Answer had been filed, and then acted pro se as well as for Edmunds who had been granted leave to intervene.

On July 14, 1966, the day after the entry of the decree sought to be vacated, Breakstone perfected his appeal pro se et al. by filing Notice of Appeal to the Appellate Court without the need of further jurisdictional requirements

(Ill. C.P.A. sec. 76(2), Appendix J). He served a copy of it, signed personally by him, on the plaintiffs' counsel, as required by Rule 34 (App. J), the same day personally. He then had 10 days in which to serve his co-parties and others. Petitioner Hettleman left on July 14, 1966 for Glen Cove, N.Y. to be with his wife who was recovering from the removal of a very large tumor on her bram. On his return to Chicago on August 3, 1966, he found in his mail box an envelope stamped "July 15, 1966" and bearing the return address of plaintiffs' counsel. It contained a "Notice of A Notice of Filing a Notice of Appeal", signed by him, advising of Breakstone's service upon him of a Notice of Appeal on July 14, 1966, a photocopy of which was also enclosed. Breakstone had not by September 24, 1966 sent the petitioners—his co-parties—his signed notice of appeal required under said Rule 34. On August 12, 1966, the petitioners filed their notice of appeal within the 30 day statutory time limit (App. J, Civil Practice Act 76(1)) and by August 22, 1966 had served signed copies thereof on each party, as above Rule 24 required. Plaintiffs filed on August 19, 1966, before said August 22, 1966, a motion to dismiss the petitioners' appeal for an alleged non-compliance with Rule 35 (App. J). Rule 35 provided that, if a co-party wished to appeal separately, he must so advise the co-party who had already perfected his appeal and had *signed* and served a copy thereof on his co-party. Petitioners argued that a signed "Notice of a Notice of a Notice of Appeal" by plaintiffs'-respondents' attorney did not constitute signed service by their co-party, and that, furthermore, if such surrogate service were good, requiring petitioners to notify Breakstone within 10 days of July 15, 1966 that they wished to appeal separately, Breakstone

did not exist on July 25, 1966, having abandoned his appeal by failure to send signed notices of his appeal on or before the 10 days from July 14, 1966 when he perfected his appeal, to the other parties, including respondent Cook County, as required by above rule 34, which later successfully moved Breakstone's dismissal. Petitioners argued further that, even if the surrogate service were good, Rule 35's cutting down the petitioners' 30 day statutory time in which to perfect their appeal was an unconstitutional infringement of the legislature's power to enact substantive rights conferred on petitioners under the Civil Practice Act sec. 76(1) (App. J). Indeed, the Supreme Court recognized its rule making power was subordinated by Sec. 2 of the CPA (App. J) to said 76(1). Even if sec. 76(1), enacted long before Rule 35, were procedural and not substantive, it had priority over Rule 35. On May 20, 1966, almost 3 months before petitioners filed their notice of appeal to the Appellate Court on August 12, 1966, the Illinois Supreme Court Rules Committee published a final draft (published by Burdett-Smith Law Pub. Co., Chicago), of Rule 303 which reads:

> "Appeals From Final Judgments of the Circuit Courts in Civil Cases.
>
> (a) Time. The Notice of Appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from . . .
>
> (b) Time for Other Appeals. If a timely notice of appeal is filed and served by a party, any other party, within 10 days of service upon him, *or within 30 days of the entry of judgment, whichever is later*, may join in the appeal, *appeal separately*, or cross appeal by filing a notice of appeal."

The Appellate Court granted plaintiffs-appellees' motion to dismiss petitioners' appeal to it, without any comment, and refused to reconsider. The Illinois Supreme Court denied leave to appeal to it without comment. Mr. Justice Schaefer, in vacation, however, after a lengthy hearing and independent investigation, granted petitioners' motion to stay the mandate as he felt they had raised a federal question of denial of procedural due process. Since they could not allege in a petition for certiorari to this Court that the constitutional questions raised in their Petition for Leave to Appeal were considered by the Illinois Supreme Court and had been rejected, they filed their unsuccessful Jurisdictional Statement in case 961, at the October, 1967 Term of this Court, hoping for a review under its supervisory powers. Pages 36-41 thereof, which is part of this Court's Records, treats this and other constitutional questions presented to the lower courts.

Petitioners' long fight to undo this unconstitutional state action has been due to this denial of procedural due process by the Illinois reviewing courts.

This Court's mandate in said Case No. 961 was registered on June 7, 1968, in the office of the clerk of the Circuit Court of Cook County. On July 11, 1968, petitioners filed their petition there to vacate the summary judgment and decree, as null and void, consisting, with 7 exhibits, of 40 legal cap pages. (Vol. 1, Trial Court Record certified on July 22, 1974 by the Appellate Court Clerk, C1 through C40), and so having deprived them of fundamental, federally guaranteed rights.

These facts, gathered from these 40 pages, and those fairly inferable from them, which have never been denied but are deemed admitted because respondents never filed

a formal appearance, answer or other plea, and never joined issue on them, support petitioners' contention that Judge O'Brien's summary judgment and decree were void because his jurisdiction was invoked by fraud, feigned issues; that there was no controversy or justiciable matter over which the Circuit Court had original jurisdiction (p. 7 above); that the plaintiffs lacked capacity to sue; that the complaint's object being to repeal the charter and dissolve the corporation by taking for a public use without any compensation the CLI private law library to create which a special charter was granted, this was not the class of suit which Judge O'Brien had authority to hear; and that, in excluding illegally the Hettleman's Counteraffidavit and exhibits attached to it, he deprived petitioner Hettleman of the fundamental right to make his defenses in opposition to the respondents' motion for summary judgment, the loss of his jurisdiction to proceed further in the cause after improper denial of a motion to disqualify himself for conflict of interest, or failure to recuse himself on his own motion, aside. (Hettleman Counteraffidavit, par. 5, C15-16):

1. Petition, par. 1, (C2) alludes to Cook County's request on December 11, 1962 for a gift of the CLI law library to create a ready made one to permit Cook County's collection of a $1 discriminatory tax under an amendment by H.B. 1199, fathered by Senator O'Brien, in 1963, to the Public Law Libraries Act, Illinois Revised Statutes, ch. 81, sec. 81 (Trial Record, C22-23). Mayor Daley was Chairman of a Buildings Commission to construct a Civic Center across the street from the combined City and County Building and got his spokesman and floor leader, Senator O'Brien, to amend ch. 81, sec. 81, Pet., par. 5e(1) and Hettleman's affidavit (C9-11) supporting said petition

refer to a December 10, 1962 MidDay Club meeting. In issue was if Cook County would honor its 11th decennial lease when the Civic Center was completed. The power-play had begun, to "take" the CLI law library and evict CLI from its lease, unless CLI would pay the prohibitive $8.26 per sq. ft. in the Civic Center, while the CLI charter continued to give free use to the County officials. The Mid-Day Club meeting was called by certain Circuit Court judges, with whom Judge O'Brien had been allied (See App. AAA, Motion to Disqualify Judge O'Brien), because they learned that local Federal judges were ready to accept the CLI library, and a special meeting of the CLI members had been called for December 22, 1962 to consider their proposal. The County judges called off the eviction threat and agreed to permit occupancy till the lease expired, if the CLI representatives would submit Cook County's gift request, with a favorable recommendation, to the members. Cook County then passed a formal resolution on December 11, 1962.

2. Exhibit 1 (C20-21) to the Hettleman Counteraffidavit attached to the Petition, which Judge O'Brien had illegally excluded at the hearing on June 20, 1966 on respondents' motion for summary judgment, is a December 18, 1963 reply by John W. Daley, later the prime mover for summary judgment, to a December 11, 1963 letter of Ben Liss, then a member of the CLI Executive Committee and later President. Liss had begun to agitate after the MidDay meeting to make the gift to Cook County and to dissolve the CLI by a suit in chancery invoking cy pres. In his December 11 letter to President Schrader, Liss outlined his plan of distribution of CLI's assets and chancery suit.

stated that he had spoken to the judges and assistant attorney general Kusch and had their assurance they would cooperate in his plan (Hettleman Counteraffidavit C14), and urged passage of his plan at the coming January annual meeting. Schrader politely turned down this request for railroading as the members had a right to be fully advised and to vote on it.

3. Pet., par. 5c. Exhibit 3 to the Hettleman Counteraffidavit (C27) is part of Liss' notes at a meeting on March 19, 1965 with Coman, assistant to Simon, President of the County Board, who, when advised that members were objecting to the gift, Coman replied to physically seize the books and then let the objectors act, to which Liss noted: "I indicated that there are some of us who consider the need for a court adjudication to relieve directors of liability in connection with the decision for transfer."

4. Pet., par. 4, (C3-C4) refers to Civil Practice Act, Art. VII, sec. 57(3) (App. J). This granted petitioners a substantive right to file their counteraffidavit at the start of the hearing which was done. The facts and circumstances are set out fully there.

5. Pet., par. 5a, b (C4-5); Hettleman Counteraffidavit, C17, point up the rigged Executive Committee November 12, 1965 meeting. The affidavits of Zillman (C33) and Luken (C34-36), 2 of those present, are positive that no contract had been submitted, making the certificate of the Secretary that they were perjurious, as was later admitted. Even if the Executive Committee had authority to give away all the corporation's assets without prior approval or subsequent ratification, as Judge O'Brien's opinion held

(App. A), the establishment of the non-existent contract for deliberation would have required dismissal of the complaint and ousted Judge O'Brien from further jurisdiction to enter the summary judgment and decree.

6. Pet., par. 5d (C6) points up the denial of the federally guaranteed fundamental property right of a member of a corporation to vote (Hettleman Counteraffidavit C16, Exh. A, C29-32). Dartmouth College, @ 571-572.

7. The ink was barely dry on the decree when CLI was evicted on August 15, 1966 from its quarters leased to April 4, 1968, on a pale excuse, despite the MidDay Club compromise of December 10, 1962, confirmed by Cook County's Resolution of December 11, 1962 requesting donation of the law library for a free, public law library, all in violation of the contract clause (Cushman letter of August 10, 1966 to Coman, that Cook County would operate as The Cook County Law Library under ch. 81, sec. 81, as tho the decree had been finally affirmed by the highest court in the land as the contract approved by Judge O'Brien required before title passed. See Appell. Ct. certified Record of the Trial Court at p. 120, 11.5-6 from the top).

The Petitioners' Main Brief filed May 8, 1970 (in single volume certified App. Ct. Record) in the Illinois Supreme Court raised the foregoing constitutional questions, to wit, at pp. 2, 3, 4, (the 2d jurisdictional ground), 5, the applicable U.S. Constitutional provisions, Points II, denial of procedural due process; IIE, property right to vote; IIG, the right to have an impartial judge; III, lack of subject matter, nudum pactum. The Supplemental Brief (in single volume Appell. Ct. Record) filed May 28, 1970, dis-

cussed the private character of the Institute as to which ey press was inapplicable, thus depriving of property without due process; the design to take the CLI library for a public use, violating the contract clause and the 5th amendment, and the fraudulent invocation of Judge O'Brien's jurisdiction by members of the Executive Committee chargeable with malum in se and prohibitum.

Even the Illinois Supreme Court order of September 22, 1970 conceded that the case involved more constitutional questions than simply Judge O'Brien's denial of orderly, procedural due process within the scheme of ordered liberty, but it did not say that they were not substantial. A reason why the writ should be allowed will discuss how the Sec. 72 error crept in as a red herring to make it appear it refused to take the direct appeal because a state procedural question only was involved.

## REASONS WHY THE WRIT SHOULD BE ALLOWED

### A Case Of First Impression

Constitutional Question No. 3

On August 7, 1968, respondents notified petitioners that they would appear on August 9, 1968 before Judge O'Brien to present their motion to strike and dismiss petitioners' petition to vacate his summary judgment and decree. Realizing that the time was too short to give much study to respondents' said motion, petitioner Hettleman typed in duplicate a draft order for time in which to prepare objections to the motion to strike. He did not have a court reporter to save the cost of what should have been a routine request, but, on the way to Judge O'Brien's courtroom, he met Leo Spira, a member of the Bar for about 40 years, and a very long time Institute member, and expressed a secret fear, due to Judge O'Brien's hostility, that he would act arbitrarily and possibly deny petitioners' petition out of hand, and asked him to act as an observer. The single volume certified on July 22, 1974 by the Clerk of the Appellate Court, and now in the possession of the Clerk of this Court, has bound into it the Excerpts from the Record and the Main and Supplemental Briefs sent originally to the Illinois Supreme Court in Case No. 41807, which its order of transfer of September 22, 1970 states it reviewed and found no substantial federal question.

This petition is longer than expected due to a summary of the facts and background litigation which, it is hoped, will enable this Court to understand better peti-

tioners' grounds for vacating Judge O'Brien's summary judgment. That section of the Main Brief, pp. 16-30 (E. followed by page means Excerpt from Record) is attached as Appendix K, which states the colloquy on August 9, 1968 before Judge O'Brien, his intransigence in refusing improperly to certify records of proceedings thereafter, and introduction of the affidavits of eye and ear witnesses on August 9, 1968 and on August 19, 1968 to vacate his order of August 9, 1968, and the pertinent decisions.

Daniel P. Ward was State's Attorney, and so attorney for Cook County, when the suit 65 CH 6863 was filed on December 10, 1965 till he was elected a Justice of the Illinois Supreme Court in the fall, 1966. Application was made to him, in vacation, to have all these documents made part of the Record on Appeal to the Illinois Supreme Court in Case No. 41807. After hearings, study of the proceedings and investigation by himself and his law clerk lasting the better part of a week, he came to the conclusion that Judge O'Brien's conduct was arbitrary, and entered several orders (Single volume certified to on July 22, 1974 by Clerk of App. Ct. @ pp. 18-25, 27, 32, 35) including them in record.

Suffice it at this point to note that Judge O'Brien stated at one time that he told the respondents they did not have to file a motion to strike the petition to vacate (the whole proceedings before him on August 9, 1968 lasted no more than about 5 minutes, and he admitted the petition was long—with exhibits it was 40 legal cap pages), and another time stated that they withdrew their motion to strike. The eye and ear witnesses Spira and Matchett swore they heard neither statement by Judge O'Brien; he simply returned respondents' motion to strike without comment.

Thus the status of the case on August 9, 1968 was that petitioners could not call up their petition to default respondents since the 30 days from the July 11, 1968 filing had not expired. There was no appearance filed by the respondents; they had no motion to strike before Judge O'Brien to cause him to rule, no joinder of issues.

Respondents never filed any brief in Case No. 61807 in the Illinois Supreme Court or took any action there from September 9, 1968 when they were served with petitioners notice of appeal to June 23, 1970 when they filed a motion to dismiss the appeal.

In the course of the proceedings before Judge O'Brien, petitioners had filed a photocopy of the respondents' motion to strike served upon them on August 7, 1968. It stated as follows (App. Ct. certified Trial Ct. Record C54-55):

> ". . . for the foregoing reasons, the Petition and the Supporting Affidavit fail to present a situation appropriate for correction under sec. 72 of the Civil Practice Act."

Petitioners suspected respondents would try somehow, as they tried in serving their Notice of a Notice of a Notice of Appeal, to lay the groundwork for a non-federal question to block ultimate review by this Court. Hence, par. 6 of the Petition to Vacate, summarizing the history of the litigation, anticipating respondents' contentions of inexcusable delay and that the record already contained the grounds for relief, pointed out that said Petition was filed within 5 weeks of the registration of this Court's mandate, and that the Hettleman Counteraffidavit in opposition to the motion for summary judgment contained much matter, especially the letter and affidavit of Zillman and Luken as

to the non-existence of Contract "C" at the November 12, 1965 Executive Committee meeting, that was not in the record and due to Judge O'Brien's illegal exclusion thereof.

Nowhere in the Petition for Relief Against the Final Judgment and Decree is relief asked under Sec. 72. The whole tenor was want of jurisdiction resulting in an absolutely void judgment and decree and deprivation of federal fundamental rights. It is to be noted from Appendix J that Sec. 72(7) specifically makes Sec. 72 inapplicable to an application for relief from a void order. *Rowan v. Matanky*, 349 Ill. App. 2d 296

Nevertheless, after an almost 2 year interval from respondents' receipt of a notice of appeal, they filed, on June 23, 1970, a motion to dismiss the appeal on the grounds that, due to the inexcusable delay in filing their petition and because Judge O'Brien knew all the facts so that nothing was submitted in the Hettleman counteraffidavit that was not already in the record, Judge O'Brien did not abuse his discretion in denying said petition. As stated already, the Supreme Court of Illinois order of September 22, 1970 in 41807 transferring the case to the Appellate Court denied said motion categorically. Again, almost 3 years later, on May 1, 1973, respondents renewed substantially the same motion to dismiss the appeal (compare the 2 motions in certified Appellate Court Record at pp. 45-51 and 76-83). Due to the Appellate Court's unawareness of the correct September 22, 1970 transfer order, and that respondents were making a prohibited collateral attack on the wrong court's ruling, it did not reach the merits, as Judge O'Brien's opinion (App. A) outlined them, as to the nature of the Institute corporation, and if Sec. 4 of its By-Laws authorized its Executive Committee to give away all its assets, including its library, tho the members

refused almost unanimously to so authorize it on June 18, 1965, and tho no quorum was present at the Executive Committee's November 12, 1965 meeting so that no such business could be then transacted, and though the true vote thereat was 3 against and 2 for such authority. In short, the Appellate Court agreed with respondents' contentions that the sole issue in the appeal was if Judge O'Brien's denial was arbitrary and that it was not. Petitioners had filed objections on June 23, 1970 to the respondents' first motion to dismiss the appeal (pp. 53-54 of the certified App. Ct. Record). Petitioners' objections to the 2d said motion to dismiss the appeal (pp. 101-120 said App. Ct. Record) pointed out that the real, threshold issue was if, on the facts of respondents' failure to file a formal appearance and to join issue by plea, Judge O'Brien had any authority to rule at all, not if he ruled improperly. That brought the case within right of direct appeal to the Illinois Supreme Court, Case No. 46360 (App. J. 1970 Const., Art. VI, sec. 4). Respondents failed to file App. Ct. brief.

Petitioners, after long and arduous research into the decisions of this Court, has been unable to find one on the 14th amendment's applicability to such facts. The closest on such usurpation of judicial authority has been in 2 criminal cases where the threshold issue was if there was any evidence at all, not its sufficiency to convict (*Thompson v. Louisville*, 362 U.S. 199) and another case where there was conviction without charge. Petitioner Hettleman asked two Chicago lawyers who have authored books on this Court's practice and have followed its decisions closely for over 25 years, Robert L. Stern and Philip B. Kurland, if they knew of any U.S. Supreme Court decisions applying the 14th amendment to the facts in a civil case, such as the case at bar. Both answered negatively.

**Absent A State's Attorney General's Information Or Proof That Creditors Must Be Protected A Chancellor Has No Judicial Power To Dissolve The Corporation, In Effect, Repealing Its Charter.**

Constitutional Question No. 2

Much has already been said that transferring the Institute law library destroyed the object for which its charter was granted primarily. Respondents sought first to have the Executive Committee file an undisguised complaint for dissolution, but counsel advised that the chancellor had no such judicial power, whether the corporation be for profit or profitless, citing *Wheeler* v. *Pullman Iron & Steel*, 143 Ill. 197 (profit); *Peo.* v. *Greer College*, 302 Ill. 538 (profitless).

That would be a clear violation of the contract clause. The same counsel, Cushman, advised that the lease till 1968 was valid. Its illegal breach would thus also impair the contract clause. Yet the same counsel wrote Coman on August 16, 1966 to evict the Institute, remove its library to the Civic Center, and there operate it under ch. 81, sec. 81, as amended by Senator O'Brien's H.B. 1199, tho legal, title had not passed, and Judge O'Brien's decree had not been affirmed by this Court, as the Contract "C" required.

**Judge O'Brien's Refusal To Recuse Himself Tainted The Entire Proceedings Before Him, Denying Fundamental Right To An Impartial Judge.**

Constitutional Question No. 1

See Petition to Disqualify him (App. AAA); Hettleman Counteraffidavit C15; Jurisdictional Statement in Case No. 961 at the October, 1967, Term of this Court, p. 22; *Tumey* v. *Ohio*, 273 U.S. 510, 531; *Ward* v. *Somerville*, 409 U.S. 57, 59, 62; Main Brief in 41,807, 30-33, 41-43.

**Judge O'Brien's Opinion (App. A) Is So Contra This Court's Decisions It Should Not Be Permitted To Stand As A Threat To Defenseless Small Colleges And Night Law Schools.**

Judge O'Brien made it easy for himself by shutting his eyes to all the material facts whose truth should have been ascertained by trial, to avoid expose of judges (recently elected Judge McGloon, as State Senator, in 1969, introduced an unfounded bill to repeal CLI's charter), such as were stated in the Complaint and pointed out to him in the various motions to strike the complaint in 65 CH 6863; in the answer (App. AAAA, par. 14), and in the minutes of 25 meetings of the Executive Committee from December 15, 1961 thru February 15, 1966 attached to John W. Daley's Affidavit supporting the respondents' motion for summary judgment. To him, the issues were purely law (not even mixed): (1) the nature of the CLI corporation as ascertained by his construction of sec. 2 of its charter, as amended in 1907, and if sec. 4 of the By-Laws (App. L) gave the Executive Committee absolute power, in its sole judgment, to give away all its assets to Cook County.

Secs. 5 and 6 of the Charter referred to the members as "proprietors or shareholders." Abundant evidence would have been introduced at a trial to show that title to the members law books were assigned, upon incorporation, to it for shares; that all the decennial leases referred to them as "stockholders"; that State's Attorney Gutnecht's opinion in 1954 to Cook County, relying on *Washington Home* v. *Chicago*, 157 Ill. 414, 423-25 which relied on *Dartmouth* College, 4 Wheat., was that CLI was strictly private. The 1907 amendment would have been shown at the trial to have been made, in the light of income tax agitation, to

make clear it was not created for profit, and did not so operate. In any event, the 1907 amendment stated it was "in accordance with the Laws of Illinois" which Judge O'Brien chose to disregard. That law of April 24, 1901 stated that a change or enlargement of the object for which a special charter was granted

> "shall not operate as a waiver, release, or forfeiture of any of the powers, rights, or privileges of such corporation, granted to or secured by it under and by virtue of such special act."

To negate any idea that the corporation's private character was in any way given up, the 1907 sec. 2 amendment stated that the library was "to be conducted, maintained, and carried on by the members of said corporation", reaffirming that the charter was granted to create a law library for the mutual benefit of its members, and that there existed no visitatorial rights as in a charitable corporation. Judge O'Brien overlooked this. Point I, 6, p. 4 of petitioners' brief that went to the Appellate Court in 1966, and then to the Illinois Supreme Court on petition for leave to appeal, shows that Judge O'Brien disregarded this 1901 law and the new reaffirmation in sec. 2 itself. The 1907 amendment did not change sec. 3 of the charter referred to in his opinion.

Judge O'Brien also overlooked the Corporation Act of April 18, 1872, sec. 33 (Hurd's R.S. Ill. Laws 1912 ed., p. 565) which permitted a majority of the members of a specially chartered corporation to vote dissolution of the corporation and distribute its assets among themselves, after paying debts. These are in the above referred to brief to the Appellate and Supreme Court as Point I, 6, p. 4.

No Board of Directors can give away all of a corporation's assets, without the required vote of its members. Every annual report of its presidents in 1963-65 recognized this, as did Cook County's Resolution of December 11, 1962 above referred to. The law is clear also: *Parrott* v. *Noel*, 8 Fed. 2d 368, 371-72; *Brayton* v. *Welch*, 39 F.Supp. 537, 539; *McQuillan* v. *National Cash*, 27 F.Supp. 639, 561; *Rogers* v. *Hill*, 289 U.S. 582; *Klein* v. *Independent Brewing Co.*, 231 Ill. 594, 613-14 (1907); *Farwell* v. *The Pyle National Co.*, 289 Ill. 157, 168, top (1919).

In the controlling case of *CBQ RR* v. *Chicago*, 166 U.S. 226 (1897), Mr. Justice Harlan I discussed at pp. 228, 233, 237, exhaustively, the 5th and 14th Amendments' prohibition against taking private property for a public use without just compensation. To the same effect, *Fayerweather* v. *Rich*, 195 U.S. 276 (1904).

## CONCLUSION.

The entire record shows such taint of the judicial system as to merit this Court's review.

Respectfully submitted,

WILLIAM HETTLEMAN
1350 Astor Street
Chicago, Illinois 60610
*Attorney for Petitioners*

## APPENDIX A

STATE OF ILLINOIS
COUNTY OF COOK—SS.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DIVISION. IN CHANCERY

CHICAGO LAW INSTITUTE, a corporation, EDWARD L. ARKEMA, and JOHN J. O'BRIEN,

Plaintiffs,

No. 65 CH 6863 vs.

THE COUNTY OF COOK, a body corporate and politic, WILLIAM G. CLARK, Attorney General of the State of Illinois, and JOHN C. GEKAS, FRANCIS G. JOLY, WILLIAM HETTLEMAN, BENJAMIN H. BLACK and HARRY G. BERSTEIN.

Defendants.

### Opinion of Judge Donald J. O'Brien

### Entered July 7, 1966

"After carefully listening to extensive arguments and careful study, the court is of the opinion that the real questions to be decided are questions of law.

"The first question is: What is the legal status of the Chicago Law Institute? After having made that determination, the next question is: Does the CyPres Doctrine apply?

"The Chicago Law Institute was incorporated by special act of the Illinois Legislature in 1857. Section 2 of the original charter provides: 'The object and intention of this corporation is for literary purposes—the cultivation of legal science the advancement of jurisprudence; the formation of a law library in the City of Chicago in the County

of Cook.' Section 3 provides, among other things, that 'the property in said library shall be divided into shares which shall be deemed personal property.'

"Subsequent to this, on April 20, 1907, the original charter was amended. More specifically, Section 2 was amended by adding, after the words "the object and intention of this corporation' the words 'is not for pecuniary profit' and then adding, after the words 'County of Cook', the words 'to be conducted, maintained and carried on by the members of said corporation, and *all shares of said corporation shall be considered as certificates of membership in said corporation.*' [Emphasis added.]

"The Illinois Legislature has passed a general Not-For-Profit-Corporation Act, (Chap. 32, Sec. 163, Ill.Rev.Stat.) which has been revised and amended from time to time. Under the provisions of this statute, not-for-profit corporations such as the Chicago Law Institute may elect to accept the general Not-For-Profit-Corporation Act, and, upon so doing, would be bound by its terms, including provisions for dissolution. The Chicago Law Institute has not elected to accept this Act and is not bound by its terms. Not being under the general Not-For-Profit-Corporation Act, its status must be determined from its own charter and by-laws and conduct of its affairs in relation to the general rules of law.

"By clear and unequivocal language, by the amendment of April 20, 1907 of the original charter, not only is the object and intention of the corporation established as being not-for-profit for 'literary purposes, the cultivation of legal science, the advancement of jurisprudence' but the entire concept of the meaning and intention as to the significance of the ownership of 'shares' is changed so that henceforth

'shares' are mere indicia of membership in said corporation, not an indicia of ownership of an interest in the assets, if any, of said corporation.

"It is, therefore, the opinion of this court that:

"1—The Chicago Law Institute comes within the definition of a charitable, and educational corporation:

"2—that its members, by owning a 'share' have a certificate of membership in the corporation entitling them to certain privileges under the corporation by-laws, but does not give the members an interest in the assets of the corporation or the right to share in the distribution of any assets upon termination of the corporation:

"3—that the Executive Committee, under the by-laws (Sec. 4) is charged with the authority and responsibility 'to exercise a general control and supervision over the affairs of the Institute';

"4—that pursuant to its authority and responsibility it conducted a long and intensive study and investigation as to the future and welfare of the Chicago Law Institute:

"5—that the CyPres Doctrine is appropriately invoked here:

"6—that in the fulfillment of its duty and the exercise of its authority, and pursuant to the use of CyPres, the Executive Committee entered into the contract (Plaintiff's Exhibit 'C' to the Complaint) and submitted same to this Court for approval;

"7—the Court approves said contract.

"Therefore, Plaintiff's motion for judgment is allowed."

/s/ Donald J. O'Brien, Judge

## APPENDIX AA

STATE OF ILLINOIS
COUNTY OF COOK—SS.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DIVISION, IN CHANCERY

CHICAGO LAW INSTITUTE, a corporation, EDWARD L. ARKEMA, and JOHN J. O'BRIEN,

Plaintiffs,

No. 65 CH 6863 vs.

THE COUNTY OF COOK, a body corporate and politic, WILLIAM G. CLARK, Attorney General of the State of Illinois, and JOHN C. GEKAS, FRANCIS G. JOLY, WILLIAM HETTLEMAN, BENJAMIN H. BLACK and HARRY G. BERSTEIN,

Defendants.

**Final Decree**

THIS CAUSE COMING ON TO BE HEARD upon Plaintiffs' motion for summary judgment or, in the alternative, for judgment on the pleadings, and upon the counter-affidavit of Defendant Benjamin H. Black, and upon the motion of Defendant J. Edward Jones to strike the affidavits in support of the motion for summary judgment;

IT IS ORDERED that the motion to strike filed by J. Edward Jones be and the same is hereby denied, and J. Edward Jones abides by and stands on his said motion;

IT IS FURTHER ORDERED that Plaintiffs' motion for summary judgment and for judgment on the pleadings be and the same is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this Court approves the Agreement be-

tween The Chicago Law Institute and The County of Cook which is attached to the Complaint in this Cause as Exhibit C, and directs The County of Cook and The Chicago Law Institute to take all steps and execute and deliver all documents necessary or desirable to carry the said Agreement into effect.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants, except defendants County of Cook and William G. Clark, Attorney General of the State of Illinois, and all intervening Defendants, and each of them, and all persons acting on behalf of said Defendants, and each of them, be, and they are hereby, permanently enjoined from interfering or attempting to interfere with the enforcement of this Decree except by appeal or other lawful court action against this Decree.

IT APPEARING TO THE COURT that Defendant Harry G. Berstein was not served with summons and did not enter his appearance herein.

IT IS ORDERED that the said Harry G. Berstein be and he is hereby dismissed from this Cause.

ENTER:

Donald J. O'Brien
Judge of the Circuit Court
of Cook County, Illinois

Dated: July 13, 1966.

## APPENDIX AAA

STATE OF ILLINOIS
COUNTY OF COOK—SS.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DIVISION, IN CHANCERY

CHICAGO LAW INSTITUTE, a corporation, EDWARD L. ARKEMA, and JOHN J. O'BRIEN,

Plaintiffs,

No. 65 CH 6863 vs.

THE COUNTY OF COOK, a body corporate and politic, WILLIAM G. CLARK, Attorney General of the State of Illinois, and JOHN C. GEKAS, FRANCIS G. JOLY, WILLIAM HETTLEMAN, BENJAMIN H. BLACK and HARRY G. BERSTEIN,

Defendants.

### Petition for Change of Venue
### Filed January 5, 1966

Petitioner, J. Edward Jones, respectfully shows to the Court that he is one of the stockholder-members of Chicago Law Institute, plaintiff corporation, and of the class referred to in paragraph 12 of the complaint.

He further states that he desires a change of venue from the Honorable Donald J. O'Brien, one of the judges of the Circuit Court of Cook County, Illinois, which with the Appellate Court, 1st District, are the Courts of record for said county, and from all of the other judges of said Circuit Court of Cook County, Illinois, and Appellate Court, 1st District, pursuant to the provisions of Chapter 146 Illinois Statutes, because the said judges referred to in this petition are interested in this suit, or their testimony is material to either of the parties to the suit, in support

of which petitioner attaches his exhibits "A" and "B" and his affidavit, which he makes a part of this petition by reference.

Petitioner further states that information of the above facts set forth in paragraph 2 above first came to his knowledge on January 3d 1966.

Petitioner further alleges that he is filing this petition with the consent of the following named defendants: John C. Gekas; Harry G. Berstein; Francis G. Joly; Julius L. Sherwin; Samuel Deutsch; Leo Spira; Irving Breakstone; James D. Montgomery and Julius Copeland; Benjamin H. Black and William Hettleman, which constitute three fourths of the defendants in said suit.

Wherefore, petitioner prays a change of venue from the above named judges pursuant to the statute made and provided in Chapter 146 Illinois Statutes aforesaid.

/s/ J. Edward Jones

State of Illinois
County of Cook—ss.

J. Edward Jones, being first duly sworn on oath deposes and says that he is the petitioner in the above petition; that he has read and signed the foregoing petition; that the allegations of fact therein are true; that he verily believes those allegations on information and belief.

/s/ J. Edward Jones

Subscribed and sworn to
before me this 4th day
of January A.D. 1966.

/s/ Frank A. Schultz
Notary Public

## AFFIDAVIT IN SUPPORT OF THE PETITION FOR CHANGE OF VENUE

State of Illinois
County of Cook—ss.

J. Edward Jones, being first duly sworn deposes and says:

1. He is a stockholder member of Chicago Law Institute and has been for more than 20 years.

2. The Honorable Donald J. O'Brien and the other judges of the Circuit Court of Cook County, Illinois, and of the Appellate Court, 1st District, which are the only courts of record in said Cook County, Illinois, are members of the Judicial Conference created by Rule 56-1 of the Supreme Court of Illinois, entered in 1957, soon after the creation of the Judicial Advisory Council of the State of Illinois on July 9, 1957, Laws of 1957 p. 2317.

3. The Honorable Donald J. O'Brien, before whom this case is now pending, was a member of the Illinois State Senate at the time of the passage of the said Act creating the Judicial Advisory Council of Illinois and voted "Yea" for the passage thereof;

4. The said Honorable Donald J. O'Brien was a member of the said Judicial Advisory Council of Illinois, by appointment of the President Pro tempore of the Illinois State Senate, from 1957 until November 1964 at which latter date he was elected to the Circuit Court of Cook County, where he now serves.

5. The duties of said Judicial Advisory Council of the State of Illinois included the study of "the functioning of

the courts of the State, both internally and in relation to all other public agencies in the State, whose work connects with that of the courts" and the submission of a written report from time to time to the Supreme Court and to the Judicial Advisory Council of the County of Cook of suggestions and recommendations resulting from such study, as they relate to legislation. Ch. 37, Courts Vol. I, Ill. Revised Statutes State Bar Association edition, page 1541, Sec. 5.

6. The Judicial Advisory Council of Cook County, Illinois, was created by an act of the General Assembly, approved July 2, 1931, Laws of 1931, p. 412, Ch. 34, Counties, Vol. I, Illinois R.S., State Bar Association edition, p. 1504, which empowered the Cook County Board of Commissioners to appoint its members, which should be five lawyers, of whom two should be judges.

7. Among the appointees, who were five judges, the following judges are presently judges sitting in the Circuit Court of Cook County: Cornelius J. Harrington; Harold G. Ward; and Arthur A. Sullivan in the Appellate Court, 1st District.

8. Among the duties and included therein of the Judicial Advisory Council of Cook County, Illinois, was the study of "the functioning of the courts of the County in relation to all other public agencies of the State and County whose work connects with the work of such courts", and the submission of a written report from time to time to the County Board of suggestions and recommendations resulting from such study, those pertaining to legislation to be submitted also to the Judicial Advisory Council of the State of Illinois.

9. On May 5, 1961 House Bill 434 was approved and provided for law libraries to be formed in counties of Illinois under 500,000 population, said statute providing "The facilities of such library shall be freely available • • • to all members of the public, whenever the county courthouse is open". The Honorable Donald J. O'Brien, then senator O'Brien voted "Yea" for the passage of said bill.

10. The above Supreme Court Rule 56-1 creates an executive committee to assist the Supreme Court to conduct the annual Judicial Conference, which comprises all the judges of courts of record of the State of Illinois. The Executive Committee recommends to the Supreme Court for appoinment by it, such other committees as it thinks necessary to further the Judicial Conference's objectives. The Supreme Court, accordingly, appointed a committee on Courthouse and Jury Facilities, in 1963, comprising four judges from Cook County: Charles S. Dougherty, Samuel B. Epstein, Harold G. Ward, and Cornelius J. Harrington, who was appointed its chairman, of whom Harrington and Ward, JJ, were then also on the Cook County Judicial Advisory Council by appointment of the Cook County Board of Commissioners.

11. The said Committee on Court House and Jury Facilities presented a report at the 1963 annual judicial conference, referred to as the Harrington Report, printed at pages 103-107 of its proceedings, a copy of which is hereto attached and designated as Exhibit "A" and made a part hereof by reference, and a copy of which was sent to every member of the General Assembly and to the Judicial Advisory Council of the State of Illinois, of which bodies the Honorable Donald J. O'Brien, now presiding over this case, was a member.

12. The Harrington Report above referred to states, in part:

"The law library (Chicago Law Institute) *acquired* on the proposal of the Honorable Seymour Simon, President of the Board of Commissioners of Cook County, by action of the Board of Commissioners taken on December 11, 1962, consists of over 150,000 volumes and includes many rare books, some that were printed in the 1600's. This is the library of the Chicago Law Institute now located on the 10th floor of the present County Building. Some of you know that the Chicago Law Institute is a *private* bar association, consisting of approximately 1500 members who have purchased memberships and who support the library by annual assessments. In the past, Cook County has furnished quarters for the Law Institute in exchange for library service to the judges of Cook County Courts and other public officials in the County Building and City Hall."

13. The said report further states:

"During the planning of the new courthouse, a serious question arose as to the future of this great library. Mayor Daley, as chairman of the Chicago Public Building Commission, having in mind the public law libraries existing downstate, pursuant to statute, Ill. Rev. Stat. (1961) c. 81, s. 81, insisted that the law library in the new building must be open to all members of the bar and not restricted to a private membership.

• • •

"Through the good offices of the Judiciary Advisory Council of Cook County and the Chicago Bar Association's Committee on the New Courthouse, the difficulty was resolved. • • •

"As a result of that meeting, it was agreed that the Chicago Public Building Commission would recommend to the Commissioners of Cook County that Cook County establish a public law library for the new court building prior to its completion; that the Chicago Law Institute would donate its excellent library collection to the proposed Cook County law library.* * *" See counsel's (A) at end.

14. At this time no meeting of the membership of the Chicago Law Institute had been called to consider and give consent to the said proposal and when said proposal was considered later, it was rejected 500 to 13, and the said parties purporting to give away the said law library had no authority to act in such manner and such proposal amounted to a taking for public purposes private property without just compensation, contrary to the provisions of Article II, sec. 13 of the Illinois Constitution and the provisions of Art. II, Sec. 2; and of the 14th Amendment to the U.S. Constitution, and amendments XIV and V thereto.

15. Senator Donald J. O'Brien was at this time the floor leader and spokesman for Mayor Richard J. Daley, referred to in the Harrington Report, and as such and in pursuance of the plan to create a public law library with the assets of the Chicago Law Institute, introduced into the Senate of the State of Illinois on June 19, 1963 House Bill No. 1199 to amend the 1961 law to bring Cook County within it, as desired by Mayor Daley and referred to in the said Harrington Report. Senator Donald J. O'Brien moved for a second reading of said bill on June 20, 1963 and for the third reading on June 25, 1963, when the law was passed, Senator Donald J. O'Brien voting "Yea" therefor.

16. Section 6 of the original charter of the Chicago Law Institute, which is attached to the original complaint as exhibit "A" and "B" thereof, provides as follows:

> "The judges of the Supreme Court and of the United States Court, and of all the courts of record in Cook County shall have free access to, and the full and entire use and enjoyment of the said library and all the privileges and advantages thereof, free of expense, under the same rules and regulations as may be provided by the by-laws of the said corporation, for the proprietors or shareholders thereof."

17. That the said Donald J. O'Brien and the other judges named have such interest in this suit that this Court should, on its own motion, grant the attached petition for a change of venue, in accordance with section 1 of Chapter 146 Illinois Statutes.

18-A. That the names of the judges of the Circuit Court of Cook County are attached as Exhibit "B" and incorporated herein by reference.

Further affiant sayeth not.

/s/ J. Edward Jones

Subscribed and sworn to
before me this 4th day
of January A.D. 1966

/s/ Frank A. Schultz
Notary Public

NOTICE OF MOTION

To: Robert S. Cushman of Spray, Price, Hough & Cushman, 134 So. LaSalle St., Chicago
Royal E. Spurlark, Pro Se
Irving Breakstone, 79 W. Monroe St., Chicago, Ill.
Cook County, Illinois, by Daniel P. Ward, State's Attorney
William G. Clark, Attorney General of Illinois

Please Take Notice that on January 5th, 1966 I shall appear before the Hon. Judge Donald J. O'Brien in his Courtroom in room 2308 of the Civic Center and shall present the attached petition and affidavit for a change of venue, at 10:00 o'clock A.M. or as soon thereafter as counsel can be heard. Please Attend.

J. Edward Jones, Attorney Pro Se

Received a copy of the above notice, petition and affidavit January 4, 1966

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(A) The said 1963 so-called Harrington Report concluded the subject by definitely tying in Senator O'Brien with the scheme, thus:

"On May 8, 1963, House Bill 1199 was introduced amending the Act in relation to the establishment of county law libraries to make it apply to Cook County."

## APPENDIX AAAA

STATE OF ILLINOIS
COUNTY OF COOK—SS.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DIVISION, IN CHANCERY

CHICAGO LAW INSTITUTE, a corporation, EDWARD L. ARKEMA, and JOHN J. O'BRIEN,

Plaintiffs,

No. 65 CH 6863 vs.

THE COUNTY OF COOK, a body corporate and politic, WILLIAM G. CLARK, Attorney General of the State of Illinois, and JOHN C. GEKAS, FRANCIS G. JOLY, WILLIAM HETTLEMAN, BENJAMIN H. BLACK and HARRY G. BERSTEIN,

Defendants.

**Answer Filed February 15, 1966**

• • • • •

9: Defendants state that the Directors of the Institute, in doing the things and entering into the alleged contracts and agreements as set forth in paragraph 9 of the Complaint, violated their fiduciary relationship to and with the members of the Institute and the plaintiff herein, the C.L.L., committed malfeasance and perpetrated a gross injustice and fraud upon the members of the Institute; that the said alleged agreements therein set forth are collusive, ultra vires and void and are designed to work and accomplish a confiscation of the assets and law library unto the plaintiff belonging, without any compensation whatsoever, and, if consummated, would constitute a denial of Due Process in the taking, and a Deprivation of private property in violation of the XIVth Amendment, section 1

and IVth and Vth Amendments to the Constitution of the United States of America, and of Article II, section 13 of the Constitution of the State of Illinois of the year 1870 being a taking of private property for public use without just or any compensation.

10: In answer to paragraph 10 of the Complaint, defendants reallege the appropriate allegations of their answer to paragraph numbered 9 of the Complaint herein.

11: Defendants deny that the plan proposed herein by the plaintiff is warranted in law and deny the existence of any facts which would warrant the application of the doctrine of cy pres to the facts and circumstances involved in this litigation and deny that the court has any jurisdiction over the subject matter, to-wit the law library and all the other assets of the plaintiff to accomplish any of the purposes contemplated by the plaintiff herein, and pursuant to the unlawful actions of its Board of Managers, Directors and Executive Committee.

12: Answering paragraph numbered 12 of the Amendment to Complaint defendants deny that the plaintiffs Edward L. Arkema and John J. O'Brien are proper parties to this action; that they have no justiciable interest in any adversary proceeding or subject matter purported to be in this cause; and that said purported cause of action has been instituted without the authority of the Chicago Law Institute, and in violation of the relationship between the officers and managers thereof thereto and who have acted in violation of and beyond the scope of their powers and authority so provided by the By-laws of the Institute, and the statutes of the State of Illinois. Defendants deny that John C. Gekas, Francis G. Joly, William Hettleman, Ben-

jamin H. Black and Harry Berstein are proper parties to *this suit. Defendants* deny that the County of Cook has any adversary interest to the purported cause stated herein and assert that its interests are identical with those of the Board of Managers, the Officers and the Executive Committee of the Institute herein to accomplish a gift of the Institute's assets to Cook County, and that no controversy whatsoever or issuable facts exist between them. Defendants deny that William G. Clark, Attorney General of the State of Illinois is a proper party to this purported proceeding in that the action does not warrant or merit the application of the cy pres doctrine, for that the Institute is not an "educational and charitable" corporation as designated by the Complaint, but is of the nature and purpose as hereinabove set forth in this Answer. Defendants further allege in the alternative that the Attorney General is the necessary and indispensable party to protect and preserve the alleged public charity against the alleged threat of loss, dissipation, waste and mismanagement of the public's property, and that the Board of Managers, the Officers and the Executive Committee of the Institute have a personal interest in the successful consummation of their plan and are without further authority to manage and control this litigation and the exclusive jurisdiction, right, power and authority to proceed herein lies with said Attorney General. Defendants further deny that this is a representative suit; that the interest of the personal defendants and plaintiffs are with respect to their respective interests identical, and in common, only within their respective groupings, but opposed, adverse and not in common as between their respective categories as set forth in the Complaint.

13. Defendants deny the allegations of paragraph numbered 13 of the Amendment to Complaint; that no ultimate facts whatsoever are stated therein to justify or explain the justification, if any, for the fears and apprehensions of the plaintiffs as to what the named persons may or may not do, nor that the said plaintiffs will suffer irreparable harm, damage or injury by reason of any acts or threats heretofore done or made by said named defendants. Defendants state that the Court is without jurisdiction to deny access to the courts as contemplated in paragraph numbered 13 of the Complaint; that there is no statement of ultimate facts showing the possibility of ultimate success in this cause by said plaintiffs herein. Defendants allege that there are no ultimate facts pleaded herein showing that any of the activities sought to be restrained herein are unlawful of themselves. Defendants allege that the relief sought to be had in said paragraph of the Complaint, to-wit number 13, contravenes Article 2, Par. 19 of the Bill of Rights of the Constitution of the State of Illinois of 1870. Defendants further deny that there is any basis, for aught that appears in said Complaint, to justify the fears and apprehensions alleged to be felt by the plaintiffs herein; that no improper conduct is charged to or against any of said named defendants during the past or present.

14. Further answering said Complaint, and the Amendment thereto, defendants allege that the Executive Committee, the officers and managers of the Institute, prior to June 18, 1965 and since said date, and each of them, and continuing down to the filing of this Complaint, at and in the City of Chicago, and at and in the County of Cook, in the State of Illinois wilfully, wrongfully, corruptly, maliciously, wantonly and unlawfully entered into a con-

spiracy and agreed, conspired and confederated, one with the other, to consummate the plan set forth in the Complaint, and the Amendment thereto, wherein and whereby the entire assets of the Institute will be made a gift to the County of Cook, against the will and desire of its members, and wherein and whereby six (6) members of said Executive Committee continuing themselves in office will control, as a majority of the Advisory Board of the Cook County Law Library, through the operation of said plan, the domination and control of the personnel, policies and operation of the library committee and as set forth in said Complaint, the Amendment thereto, and the Exhibit thereto attached, and in addition thereto as to disbursements of moneys out of the library funds provided by Ch. 81, S. 81 Ill. Rev. Stats. Defendants allege that pursuant to said conspiracy, to accomplish the objectives hereinbefore set forth, said plaintiffs and their agents and servants in said behalf have done the following acts to-wit:

(a) Have refused to make any effort, since the commencement of the negotiations with Cook County as alleged in paragraph numbered 6 of the Complaint, to increase the membership of the Chicago Law Institute, on the ground that their plan to give away to Cook County all of the assets and library of the Institute was certain of both adoption and consummation.

(b) Have refused to hold the annual meeting of the members of said Institute as provided for the date thereof in the By-laws, S. 12, of the Institute, but have, by abuse of power and discretion, postponed the same without date, after having first sought sanction and approval for said postponement on motion before the Court, but which such proposed approval and sanction was disallowed; and

(c) Have refused to call special meetings of the membership of the Institute upon petition therefor as made to them by the members of the Institute, in compliance with the By-laws, S. 12, of the Institute, despite the agreement of the President so to do; and

(d) Have failed to levy the annual assessments against the members of the Institute, in conformity with past practice over the years, so as to enable the Institute to function in full financial stability and solvency; and

(e) Have evaded the annual meeting date in order to avoid the necessity of election to continue in office, and to avoid the necessity of submitting their candidacy for continuance in office to the membership, and the matter of the dismissal of this action, and the abandonment of the plan as set forth in the Complaint, and the Amendment thereto; and

(f) Have reprimanded and threatened the employees of the Institute for giving to defendants herein access to the records of the Institute, to enable them to make their proper defense in this litigation; and

(g) Have sought to perpetuate themselves in office; and

(h) Refuse to permit the members of the Institute to pass upon the question of the advisability of dismissing this suit; and

(i) Have sought to enjoin the defendants and the members of the Institute from access to the Courts for such other action and relief as said members may be entitled to have adjudicated against said plaintiffs and the Executive Committee; and

(j) Have sought to disable the Institute in its financial integrity and solvency by discouraging present members from continuing their membership in the Institute and prospective members from applying for membership therein; and

(k) Seek to impair the financial reserves and structure of the Institute to further the allegations by them made in the Complaint, and so as to make the continued operation of the Institute unfeasible, inadequate, if not impossible.

(l) Have refused to submit for the consideration of the membership of the Institute and their vote on any alternative plan to the one by them proposed.

15. Defendants allege that the plaintiffs seek relief in a court of equity to which they come with unclean hands; and further that they seek to have the Court adjudicate and give to them advice, counsel and approval of a proposed deed of gift, proposed to be made to the County of Cook, concerning which there exists no live controversy as between themselves and said County of Cook; and that the relief sought in these proceedings is tantamount to a dissolution of the Institute by giving away all its assets, leaving it an empty shell, and in contravention of any power of the Court to dissolve the said Chicago Law Institute as a matter of law.

Wherefore, the said defendants demand judgment dismissing the Complaint herein, and the Amendment thereto, for want of equity, and denying each and every separate prayer for relief therein contained, and collectively as a whole, and that they recover their costs herein.

## EXHIBIT B

ARTICLES OF AGREEMENT made and entered into this 11th day of March, A.D. 1958, by and between THE COUNTY OF COOK in the State of Illinois, party of the first part, and THE CHICAGO LAW INSTITUTE, a corporation organized and existing under the laws of the State of Illinois, party of the second part,

WITNESSETH

THAT WHEREAS, the Judges of all the courts of record of Cook County, the various officials, elected and appointed of Cook County, the Judges of the Supreme Court of Illinois, and the Judges of the United States Courts, holding office and court in the City of Chicago, Cook County, Illinois, have, in their official capacity and in the transaction of the public business, continuously since the year A.D. 1857, had without charge to them or payment by them to The Chicago Law Institute, full access to, and full and entire use and enjoyment of the Library of The Chicago Law Institute, and said Judges and Officials have, during said period, made extensive and continuous use of said Library and its facilities and services; and in consideration thereof, and in payment therefor, the said The County of Cook, has continuously since said year A.D. 1857, furnished to the said The Chicago Law Institute appropriate space and quarters, elevator service, heat, and light, etc. for its Library, either in the Cook County Court House or in buildings temporarily leased and used by said The County of Cook as a Court House; and

WHEREAS, from time to time since the year A.D. 1857, ARTICLES OF AGREEMENT have been entered into between the said The County of Cook and the said The

Chicago Law Institute, thus assuring to said County of Cook during said period that it would be relieved from a great expense in furnishing to said Judges and Officials the required library facilities and books as provided in the Statutes of the State of Illinois, Chapter 34, Section 26, reading:

DUTIES OF COUNTY BOARD: Sec. 26. It shall be the duty of the County Board of each county: Third: To provide suitable books, stationery, printing and postage for the use of the County Board, County Clerk, County Treasurer, Recorder, Sheriff, Coroner, State's Attorney, Superintendent of Schools, Surveyor, Judges and Clerks of Courts of Record"; and said agreements between the parties hereto have been renewed and extended from time to time; and

WHEREAS, there is now in full force and effect certain Articles of Agreement dated the 5th day of April 1948, and extending to the 5th day of May 1958 and entered into by and between said The County of Cook and said The Chicago Law Institute, continuing and covering the arrangement above described and described in said Articles of Agreement so dated said 5th day of April 1948; and

WHEREAS, the business of the County of Cook demands and requires that the services heretofore rendered and now being rendered by said The Chicago Law Institute (under the Articles of Agreement now in force) to said The County of Cook and its various officers elected and appointed; to the Judges of all the Courts of Record and other public officials in and about the discharge by them of their various official duties, be continued to be furnished under existing terms and conditions.

NOW THEREFORE, in consideration of the premises and of the covenants and agreements hereby made on the part of the party of the second part to remain in said County Building and to continue to permit and allow the use of its Library and of any and all books contained therein, at all reasonable times, by the County Board, County Clerk, County Treasurer, Recorder, Sheriff, Coroner, State's Attorney, Superintendent of Schools, Surveyor, Judges and Clerks of Courts of Record, the legal departments of the City of Chicago and its law officers, and Judges of the Municipal Court of Chicago, and said party of the first part hereby agrees with the party of the second part that it shall hold for use as aforesaid by said second party in consideration for and exchange for, the services agreed to be rendered to the first party by said second party, that part of the South Half (S½) of the Tenth (10th) Floor of the Cook County Court House now used and occupied by the party of the second part, (it being understood and agreed that no part of the South Half (S½) of the Tenth (10th) Floor of the Cook County Court House as now used and occupied and used for Elevator Service or any part of said South Half (S½) of the Tenth (10th) Floor as occupied and used for County purposes is to be included in this contract), from the fifth day of April, A.D. 1958, to the fourth day of April, A.D. 1968, free of and from all charges other than the use of, and the privilege to use, said Library by the Judges and Officers hereinabove mentioned and described; and in consideration of the premises and of the covenants and agreements herein contained, said The County of Cook, party of the first part, covenants and agrees during the term hereof to furnish the party of the second part, in addition to the floor space occupied

by it, all necessary light, heat, janitor service and such reasonable day and night Elevator Service from eight o'clock A.M. to ten o'clock P.M. (Except Sundays and holidays), as may from time to time be determined by the Board of Commissioners of Cook County, for the premises so occupied by said second party in said County Building, during the times said Library shall be kept open, but not later than ten o'clock at night; and,

In consideration of the premises said party of the second part, further agrees during the term hereof to continue to render the services hereinabove set forth and to remain in said County Building as aforesaid; and agrees that at all reasonable times said Judges and Officers as aforesaid, shall have the same rights and privileges touching the use of said Library which are or at any time during the term hereof, may be enjoyed by the members and stockholders of said party of the second part without charge to them; and that it will make and submit to the President of the party of the first part annually a report of its conditions and affairs.

IN WITNESS WHEREOF, These presents have been executed by the proper officers of the respective parties hereto, on the day and year first above written.

The County of Cook,

By /s/ Daniel Ryan
President of the Board of Commissioners
of Cook County, Illinois

/s/ Edward J. Barrett
County Clerk and Ex-officio Comptroller
of Cook County, Illinois

/s/ Dorothy Boland
Purchasing Agent for Cook County,
Illinois

The Chicago Law Institute,
By /s/ Fred Holy (?)
President of the Chicago Law Institute

Attest:

/s/ Joseph R. Cecchini
Secretary of The Chicago Law Institute.

State of Illinois } ss.
Supreme Court }

**APPENDIX B**

**At a Term of the Supreme Court,** *begun and held in Springfield, on Monday, the*

urteenth *day of* September *in the year of our Lord, one thousand nine hundred and*

seventy *, within and for the State of Illinois.*

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE JOHN T. CULBERTSON, JR.

JUSTICE CASWELL J. CREES — JUSTICE MARVIN F. BURT

WILLIAM J. SCOTT, ATTORNEY GENERAL

ROBERT G. MILEY, MARSHAL

ATTEST: JUSTIN TAFT, CLERK

---

BE IT REMEMBERED, that, to-wit: on the 22nd day of September, A.D. 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

| | | |
|---|---|---|
| Chicago Law Institute, a corporation; Edward L. Arkema and John J. O'Brien, Appellees | ) | |
| No. 41807 vs. | ) | Appeal from Circuit Court Cook County 65 ch 6363 |
| The County of Cook, a body politic and corporate, William Hettleman and Palmer D. Edmunds, et al., | ) | |
| " " " " " | ) | |
| William Hettleman and Palmer D. Edmunds, Appellants | ) | |

And now, on this day, the Court having duly considered the motion by appellees to dismiss this appeal, and being now fully advised of and concerning the premises, does make the following announcement:

"Appellants contend that a ruling by the trial court denying a petition for relief under Section 72 of the Civil Practice Act deprived them of due process of law and other constitutional rights. From our review of the excerpts from the record and appellants' briefs, we are of the opinion that the appeal does not present a substantial constitutional question.

The motion by appellees to dismiss the appeal is denied. On the Court's own motion the cause is transferred to the Appellate Court, First District."

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 22nd day of April, A.D. [illegible]

United States of America **APPENDIX C**

State of Illinois
Supreme Court } ss.

**At a Term of the Supreme Court,** *begun and held in Springfield, on Monday, the* **fourteenth** *day of* **September** *in the year of our Lord, one thousand nine hundred and* **seventy** *, within and for the State of Illinois.*

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE JOHN T. CULBERTSON, JR.

JUSTICE CASWELL J. CREBS — JUSTICE MARVIN F. BURT

WILLIAM J. SCOTT, ATTORNEY GENERAL

ROBERT G. MILEY, MARSHAL

ATTEST: JUSTIN TAFT, CLERK

---

*BE IT REMEMBERED, that, to-wit: on the* 22nd *day of* September *A. D. 19* 70, *the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:*

Chicago Law Institute, a corporation; Edward L. Arkema and John J. O'Brien,

Appellees

No. 41807 vs.

The County of Cook, a body politic and corporate, William Hettleman and Palmer D. Edmunds, et al.,

William Hettleman and Palmer D. Edmunds,

Appellants

Appeal from Circuit Court Cook County 65 Ch 6363

FILED
OCT 23 1970
CLERK

*And now, on this day, the Court being fully advised and informed the record and proceedings of record as well as the briefs and argument filed herein, and the Court being fully advised in the premises is of the opinion, finds and affirms that this Court has no jurisdiction of said appeal in this case.*

*THEREFORE, it is ordered by the Court that this case be and the same is hereby transferred to the Appellate Court for the* First *District of the State of Illinois, and the Clerk of this Court is directed to transmit the transcript and files herein with the order of this transfer to the Clerk of said Appellate Court.*

*I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.*

*In Witness Whereof, I have hereunto set my name and affixed the seal of said Court this* 15th *day of* [illegible] *A. D.* 19 70

[illegible] Clerk.

# United States of America

**APPENDIX D**

State of Illinois } ss.
Supreme Court }

**At a Term of the Supreme Court,** *begun and held in Springfield, on Monday, the* fourteenth *day of* September *in the year of our Lord, one thousand nine hundred and* seventy *, within and for the State of Illinois.*

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE JOHN T. CULBERTSON, JR.

JUSTICE CASWELL J. CREES — JUSTICE MARVIN F. BURT

WILLIAM J. SCOTT, ATTORNEY GENERAL

ROBERT G. MILEY, MARSHAL

ATTEST: JUSTIN TAFT, CLERK

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BE IT REMEMBERED, that, to-wit: on the 22nd day of September, A.D. 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Chicago Law Institute, a corporation; Edward L. Arkema and John J. O'Brien,

Appellees

No. 41807 vs.

The County of Cook, a body politic and corporate, William Hettleman and Palmer D. Edmunds, et al.,

" " " " "

William Hettleman and Palmer D. Edmunds,

Appellants

Appeal from Circuit Court Cook County 65 ch 6863

And now, on this day, the Court having duly considered the motion by appellees to dismiss this appeal, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion of appellees to dismiss this appeal be, and the same is, denied.

It is further ordered that on the Court's own motion this cause is transferred to the Appellate Court, First District.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this [illegible] day of April A.D. 1971.

Clerk,
Supreme Court of the State of Illinois.

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

**APPENDIX**

Present The Honorable Joseph Burke Presiding Judge.

Present The Honorable Mayer Goldberg Judge.

Present The Honorable Edward J. Egan Judge.

Leslie V. Beck Clerk. Richard J. Elrod Sheriff.

Chicago Law Institute, a corporation, Edward L. Arkema and John J. O'Brien, Appellees

No. 55447 vs.

The County of Cook, a body corporate and politic, et al., Appellants

Appeal from the Circuit Court of Cook County (No. 65-CH-6863)

The Court having considered the motion of Appellees by their counsel to move the Court to dismiss the appeal in the above entitled cause, as per affidavit filed herein, and being fully advised in the premises, doth grant said motion.

It is therefore ordered by the Court that the appeal in the above entitled cause be and the same is hereby dismissed out of this Court.

It is further ordered by the Court that the Appellant be allowed 40 days to file objections thereto.

Entered: September 13th, 1973

CERTIFICATE

I certify that this is a copy of the order of the Appellate Court, First District.

_____ 19__

Clerk of Court

**APPENDIX F**

State of Illinois } ss.
Supreme Court }

**At a Term of the Supreme Court,** *begun and held in Springfield, on Monday, the* fourteenth *day of* January *in the year of our Lord, one thousand nine hundred and* seventy-four *, within and for the State of Illinois.*

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE CHARLES H. DAVIS

JUSTICE JOSEPH H. GOLDENHERSH — JUSTICE HOWARD C. RYAN

WILLIAM J. SCOTT, ATTORNEY GENERAL

WILLIAM G. LYONS, MARSHAL

ATTEST: JUSTIN TAFT, CLERK

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BE IT REMEMBERED, that, to-wit: on the 30th day of January, A.D. 1974, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

The Chicago Law Institute, a corporation, Edward L. Arkema and John J. O'Brien,
Respondents
No. 46360 vs.
The County of Cook, a body corporate and politic,
Respondent
.....
William Hettleman and Palmer D. Edmunds,
Petitioners

Petition for Leave to Appeal from Appellate Court First District 55447 65 CH 6863

And now, on this day, the Court having duly considered the petition for leave to appeal filed herein, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the petition for leave to appeal be, and the same is, denied.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 10th day of April, A.D. 1974.

Clerk,
Supreme Court of the State of Illinois.

United States of America

State of Illinois } ss.
Supreme Court }

**APPENDIX G**

**At a Term of the Supreme Court,** *begun and held in Springfield, on Monday, the* eleventh *day of* March *in the year of our Lord, one thousand nine hundred and* seventy-four *, within and for the State of Illinois.*

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE CHARLES H. DAVIS

JUSTICE JOSEPH H. GOLDENHERSH — JUSTICE HOWARD C. RYAN

WILLIAM J. SCOTT, ATTORNEY GENERAL

WILLIAM G. LYONS, MARSHAL

ATTEST: JUSTIN TAFT, CLERK

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BE IT REMEMBERED, that, to-wit: on the 21st day of March, A.D. 1974, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

| | | |
|---|---|---|
| The Chicago Law Institute, a corporation, Edward L. Arkema and John J. O'Brien, Respondents | ) | |
| No. 46360 vs. | ) | Petition for Leave to Appeal from Appellate Court First District 55447 65 CH 6863 |
| The County of Cook, a body corporate and politic, Respondent | ) | |
| ------- ------- ------- ------- | ) | |
| William Hettleman and Palmer D. Edmunds, Petitioners | ) | |

And now, on this day, the Court having duly considered the motion by petitioners for reconsideration of the order denying petition for leave to appeal and for clarification, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by petitioners for reconsideration of the order denying petition for leave to appeal and for clarification be, and the same is, denied.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 11th day of April, A.D. 1974.

Clerk,
Supreme Court of the State of Illinois.

# United States of America

**APPENDIX H**

State of Illinois } ss.
Supreme Court }

**At a Term of the Supreme Court,** *begun and held in Springfield, on Monday, the* eleventh *day of* March *in the year of our Lord, one thousand nine hundred and* seventy-four *, within and for the State of Illinois.*

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE CHARLES H. DAVIS

JUSTICE JOSEPH H. GOLDENHERSH — JUSTICE HOWARD C. RYAN

WILLIAM J. SCOTT, ATTORNEY GENERAL

WILLIAM G. LYONS, MARSHAL

ATTEST: JUSTIN TAFT, CLERK

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BE IT REMEMBERED, that, to-wit: on the 11th day of March, A.D. 1974, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

| | |
|---|---|
| The Chicago Law Institute, a corporation, Edward L. Arkema and John J. O'Brien, Respondents | |
| No. 46360 vs. | Petition for Leave to Appeal from Appellate Court First District 55447 65 CH 6863 |
| The County of Cook, a body corporate and politic, Respondent | |
| ------- ------- ------- ------- | |
| William Hettleman and Palmer D. Edmunds, Petitioners | |

And now, on this day, this cause coming on to be heard on motion by petitioners to recall and stay the mandate, and the Court being duly advised in the premises;

IT IS HEREBY ORDERED that the motion by petitioners to recall and stay the mandate be, and the same is, allowed, and that the mandate be recalled and stayed.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 16th day of April, A.D. 1974.

Justin Taft
Clerk,
Supreme Court of the State of Illinois.

# APPENDIX I

## Supreme Court of the United States

*No.* A-1178

WILLIAM HETTLEMAN, ET AL.,

Petitioners,

v.

THE CHICAGO LAW INSTITUTE, ET AL.

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**ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI**

---

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 5, 1974.

s/ William H. Rehnquist
Associate Justice of the Supreme Court of the United States

Dated this Tenth day of June, 1974.

## APPENDIX J

### Illinois Statutes

The 1965 Ill. Rev. Stats., ch. 47. Eminent Domain. Sec. 1, at p. 2027. Compensation-Jury. Private property shall not be taken or damaged for private use in which compensation is not made by the State in its corporate capacity, such compensation shall be ascertained by a jury, as hereinafter provided.

The 1965 Illinois Revised Statutes, ch. 110, Civil Practice Act. Art. I. Scope & Nature, Sec. 2, at p. 1521. Power of Courts to Make Rules. (1) The Supreme Court of this State has power to make rules of pleading, practice and procedure for the circuit, Appellate and Supreme Court, supplementary to, but not inconsistent with the provisions of this Act.

Sec. 4. Act to be liberally construed . . . to the end that controversies may be speedily and finally determined *according to the substantive rights of the parties.*

Art. VII. Trial Practice. Sec. 57, at p. 1532. Summary Judgments and Decrees. The opposite party may, prior to or *at the time of the hearing on the motion,* file counteraffidavits.

Sec. 72, at p. 1535. Relief from judgments and decrees.

(1) Relief from final orders, judgments and decrees, after 30 days from the entry thereof, may be had upon petition as provided in this section. Writs or error coram nobis and coram vobis, writs of audita querela, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds

for said relief heretofore available, either at law or in equity, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order, judgment or decree from which relief is sought or of the proceedings in which it was entered. . . .

(2) The petition must be filed in the same proceeding in which the order, judgment or decree was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record. . . .

(3) The petition must be filed not later than 2 years after the entry of the order, judgment or decree. Time during which the . . . ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years . . .

(6) Any order entered denying or granting any of the relief prayed in the petition is appealable.

(7) Nothing contained in this section affects any existing right to relief from a *void* order, judgment or decree, or to employ any *existing* method to procure that relief.

Sec. 76. (1) No appeals may be taken from the trial court to the Supreme or Appellate Courts after the expiration of 30 days if the entry of the order, decree, judgment or other determination complained of . . . (2) an appeal is perfected when the notice of appeal is filed in the lower court. After being perfected no appeal shall be dismissed without notice, and no step other than that by which the appeal is perfected is jurisdictional.

**Rules of Supreme Court of Illinois**

1. In effect on July 13, 1966 when Decree (Appendix AA) entered.

Rule 34. *Service of Notice of Appeal*

(1) A copy of the notice of appeal shall be served upon each party whether appellee or *co-party*, who would be adversely affected by any reversal or modification of the order, judgment or decree, and upon any person or officer entitled by law to notice of the appeal, within 10 days after the notice of appeal is filed in the trial court.

Rule 25. *Notice of Appearance—Cross Appeal—Separate Appeal by Co-Party*

(1) . . . each co-party who did not join in the notice of appeal but who desires to . . . prosecute a separate appeal shall, within 10 days after service upon him of notice of appeal serve a notice upon each party or attorney or firm of attorneys *who signed the notice of appeal*, and upon each appellee, person or officer entitled to receive notice of an appeal, and file a copy thereof in the trial court.

2. May 20, 1966. The Supreme Court Rules Committee published a final draft (published by Burdette-Smith Co., Chicago) Rule 303 of which brought the above rules 34 & 35 in harmony with above C.P.A. secs. 76(1) and (2), and became effective January 1, 1967:

Rule 303. *Appeals from Final Judgments of the Circuit Court in Civil Cases*

(a) Time. The Notice of Appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from . . .

(b) Time for other appeals. If a timely notice of appeal is filed and served by a party, any other party, within 10 days of service upon him, *or within 30 days of the entry of judgment, whichever is later, may* join in the appeal *by filing a notice of appeal.*

# APPENDIX K

THE REQUIREMENTS OF THE PROCEDURAL DUE-PROCESS CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL, AND OF ARTICLE II, SECTION 2 OF THE ILLINOIS, CONSTITUTION WERE NOT MET.

1. No Notice, In Contemplation Of The General Law, Was Ever Given Defendants That Plaintiffs' Motion To Strike Defendants' Petition To Vacate The July 13, 1966 Decree, Noticed By Plaintiffs About August 7, 1968 For Presentation On August 9, 1968 Would Not Be Argued Or Considered By The Trial Judge.

Defendants' Petition To Vacate was filed on July 11, 1968. The Notice of filing thereof (R.C.1) stated:

> "You are required to file an answer in this case, or otherwise file your appearance, in the office of the clerk of this court, within 30 days, exclusive of this day of service upon you. If you fail to do so, a judgment by default may be taken against you for the relief prayed in the Petition, a copy of which, and the Affidavit of William Hettleman attached thereto, are hereby served upon you."

There was proper proof of service of the foregoing Notice, Petition, and Affidavit (R.C.1). The petition prayed the court

> "...to vacate, set aside, modify or amend the summary judgment and the decree rendered thereon on July 13, 1966, or grant such other and further relief as the equity and justice of this case may require." (E.7)

Plaintiffs never filed their appearance in the office of the Clerk of the Circuit Court of Cook County. On or about August 8, 1968, Mr. Cushman, plaintiffs' attorney, noted in his own hand on the trial judge's odd-numbered motion book, as item No. 8 therein, that he would, on August 9, 1968, present a motion to strike the petition.

On August 9, 1968, the following colloquy (E.26-27,31) occurred before the trial judge, as his minute clerk called plaintiffs' said Motion No. 8:

> Judge O'Brien (addressing Hettleman): Did I hear Chicago Law Institute?
> Hettleman: Yes, I am back here again.
> Judge O'Brien (laughing and stretching out his hand): Well, what have you got?
> Hettleman (handing the Judge copy of the Petition to Vacate, etc.): We have filed a Petition to Vacate your Decree of July 13, 1966.
> Judge O'Brien (glancing at the copy of Petition, affidavit and exhibits): What do you expect me to do? Embrace you?
> Hettleman: No. Here's a copy of the Plaintiff's Motion to Strike the Petition.
> Cushman: Judge, this our Motion (sends up their Original copy whereupon Hettleman reached for the copy of that motion served upon him).
> Judge O'Brien (handing back the Original Motion to Strike to Mr. Cushman, and the copy of the Petition to Vacate to Mr. Hettleman): I went into this case thoroughly over two years ago, and I don't want to go into it again. You have had your review in the Appellate Court, the Illinois Supreme Court, and I understand, in the United States Supreme Court. I do not propose to review the Supreme Court of the United States. Drew an order denying this Petition. Counsel, stand aside (addressing Hettleman).
> Hettleman: I want the order to show that there has been no oral argument.
> Judge O'Brien: Any way you want it.
> The parties retired to the conference room to draw the order. Hettleman insisted it show there was no real hearing and no argument, but respondents' attorneys refused to do so, stating that the petition to vacate had come on to be heard and was denied. The parties then reapproached the bench, respondents handing up their draft of the order.
> Hettleman: I would like the order to show there was no hearing and no argument.
> Judge O'Brien (signing the draft order): You presented the petition and there was a hearing.
> Hettleman: This was a hearing?
> Judge O'Brien: Yes.

As the order (E.25) was being written out in long hand in the conference room by Mr. Ludvig, assistant to Mr. Cushman, the plaintiffs'

attorneys, and defendants were protesting its illegality for want of due process, Mr. Ludwig blurted out "Our motion to strike was withdrawn" (E.46-47) and Mr. Cushman remarked "Don't pay any attention to him. Finish writing the order."

Upon returning from the conference room into the courtroom, the draft order of August 9, 1968 (E.25) was handed to the trial judge (E.55). Neither the plaintiffs' attorneys nor the trial judge, during the entire proceeding on August 9, 1968, uttered a sound (E.46-47) about the plaintiffs withdrawing the noticed motion to strike. Yet by some strange mental telepathy possessed by the trial judge, he got a message from outer space, garbled and confused, that morning of August 9, 1968 of the withdrawal of plaintiffs' motion to strike the petition. Upon presentation of the Report of Proceedings for certification, on October 16, 1968, the trial judge admitted that Mr. Cushman handed up on August 9, 1968 motion to strike and insisted on arguing it (E.25), but then omitted the following static: Cushman filed the said motion on August 19, 1968 (E.60), and then withdrew it (E.42), but "I told Cushman that it wasn't necessary for him to file." (E.60) Attorney Spira's affidavit (E.48) stated he heard no such direction by the trial judge on August 9, 1968. Attorney Matchett's affidavit (E.49) stated he heard no such direction on August 19, 1968.

Quaere: Though contrary to fact, but taking at face the statement of Mr. Ludwig in Mr. Cushman's presence in the conference room and the last sentence in the next preceding paragraph, the motion to strike, and consequently the notice thereof, having been withdrawn, why should

not plaintiffs be deemed in default for failure to comply with the notice (R.C.1) attached to defendants' petition, and the defendants granted their prayer for relief?

On the other hand, accepting the colloquy on August 9, 1968 as true leads to the conclusion that defendants' were not given the notice required by procedural due process of law.

In Hultberg v. Anderson, 252 Ill. 607, this Court said, at p.615:

> "Under the due process clause of the constitution a party is not only entitled to notice of the proceeding against him but he is also entitled to be heard in his defense. Of what avail is it to summon a party into court if, after he appears, the court arbitrarily refuses to hear him? A judgment pronounced without any judicial determination of the facts which alone can support such judgment is merely the arbitrary edict of the judge, and is as much wanting in due process of law as though the party against whom it is entered had received no legal summons. Chicago, Burlington and Quincy Railroad Co. v. City of Chicago, 166 U.S. 226; Fayerweather v. Rich, 195 Id 276." (italics supplied)

See, to the same effect, Gorin v. McFarland, 80 Ill. App. 2d 398, 405 (4th Dist., 1969, Hannah, J. Opin.)

2. No Full And Adequate Opportunity Was Granted Defendants To Object To Plaintiffs' Motion To Strike, Nor To Present Any Arguments In Support Of Their Petition To Vacate The July 13, 1966 Decree, Nor A "Hearing" As Defined In Law.

The Petition, filed July 11, 1968, consisted, with exhibits attached to the Hettleman counter-affidavit, of 37 legal foolscap-size pages which contained close to 13,000 words! (E.1-24, R.C.1-36, E.62) On August 9, 1968, the day plaintiffs noticed for presentation of their Motion #8 (E.47) to strike the petition, the trial judge first heard the calls of deceased Judge Cornelius J. Harrington (E.36) and of ill Judge Walker Butler. The motions seemed interminable, before he reached

his own call which consisted of 14 motions. Plaintiffs' Motion #9 (E.33) was reached about 11:30 A.M. The day was stifling hot. The trial judge was obviously impatient, exhausted, and irritable. The Record shows he was confused about what transpired in the proceeding before him on Motion #8 (E.47). Plaintiffs' failure to order up the file in 65CH6863 from the Court Clerk's office, as required by a notice under the judge's bench (E.30,39), added to the confusion, requiring defendants' to use their file copies of their petition and plaintiffs' motion to strike to indicate the nature of the pleadings, prefatorily to request for time in which to file objections to plaintiffs' motion to strike and to prepare for a hearing on the issues thus defined (E.62). A similar draft order (E.28) was attached to defendants' motion presented on August 19, 1968 (E.26-27) to vacate the August 9, 1968 order (E.25).

Defendants, whose funds in carrying on the defense of their interests, since December 10, 1965, have been very limited, conserved on the expense of paying $15.00 for a court reporter's few minutes attendance (E.37, R.C.127) on what should have been the grant of a routine request for leave to file objections, but, for reasons which will appear in discussing the trial judge's historical psychological adverse interest in this case (p31-33 this Brief), Attorney Leo Spira was requested, out of caution, to attend the proceeding on August 9, 1968 (E.32) instead.

Continuous unsuccessful efforts were made to afford the trial judge an opportunity to correct his order of August 9, 1968 (E.32) by

motions on August 19, 1968 (E.26-28) and on August 30, 1968 (E.30-32) to vacate it, and the order of August 19, 1968 (E.29), and by motions to certify Reports of Proceedings.

Paragraph 4 of the motion, on August 19, 1968, (E.26-28) to vacate the August 9, 1968 judgment order contained the foregoing colloquy before the trial judge on August 9, 1968. Attorney Hattleman had reduced it to writing immediately upon his departure from the courtroom, shocked by such bold, intemperate, and flagrant denial of procedural due process of law.

When the filed motion (E.30-32) was presented to the trial judge, on August 19, 1968, to vacate his order of August 9, 1968, denying and dismissing defendants' petition, the Report of Proceedings on August 19, 1968 (E.36-39) shows that violent efforts were made by the plaintiffs' attorney, Mr. Ludwig, and the trial judge, to repeat the "bum's rush" given Attorney Hattleman on August 9, 1968. It was only with the greatest difficulty that the trial judge was prevailed upon to read the simple two (2) page motion. When the trial judge protested the colloquy on August 9, 1968 did not state what transpired then (E.36) and threatened, first, to deny leave to file the motion to vacate his order of August 9, 1968, and, then, to expunge the motion, he refused to state what did transpire, then repeated (E.37) that the colloquy didn't transpire, then retracted to admit some did transpire, that some was accurate, but insisted some was inaccurate (E.38).

On August 30, 1968, defendants presented their 2 page motion to the trial judge (E.30-31), to which was attached the Spira affidavit

(E.32) corroborating the colloquy he heard until counsel retired to the conference room to draw the August 9, 1968 order sought to be vacated, requesting him to point out the alleged inaccuracies in the colloquy on August 9, 1968 (E.26-27). The Report of Proceedings on August 30, 1968 (E.40-44) shows that he at first refused point blank to point out the inaccuracies, then excused himself because he could not remember less than 3 weeks back.

On October 16, 1968, defendants presented to the trial judge their motion to ask him certify the Report of Proceedings on August 9, 19, and 30, 1968. Because the State's Attorney had refused to certify the colloquy on August 9, 1968, since he had not been present in court then (R.C.134), a proposed Report of Proceedings under Rule 323(a) was submitted to him and all parties, on September 13, 1968, together with certified stenographic Report of Proceedings on August 19 and August 30, 1968. The proceeding , on October 16, 1968, began as it did on August 19, 1968 by the trial judge's stating the colloquy didn't transpire (E.51), his retreat from this position to admit some did transpire (E. 52). He then reviewed the colloquy admitting all therein transpired, except that he laughed (E.53), that he merely glanced at the copy of the petition, affidavit and exhibits (E.54) which he admitted was a thick petition (E.54, and p. 27 of this Brief), and that there was no oral argument (R.C.129) or hearing (R.C.131).

The following contradicts the trial judge's assertion that he read the admittedly 37 page, 13,000 word petition and exhibits, and that defendants argued the merits and had a hearing of their petition:

1. At the hearing, on August 19, 1968 to vacate his August 9, 1968 order he stated, in haste to despatch Attorney Hettleman (E.38-39), over protest that there had been no argument by him on August 9, 1968 before the petition was denied and dismissed (E.25,34):

> "You made a presentation and I heard you and I said that resolved it. That was all the argument I was going to hear."

At the August 30, 1968 hearing, over protest that the defendants appeared, on August 9, 1968, in response to the plaintiffs' notice that they would present their motion to strike defendants' petition, the following colloquy occurred (E.43-44)

> "The Court: You came in on a motion to vacate my judgment?
> Mr. Hettleman: Your Honor, it was their motion and they noticed me for August 9th.
> The Court: ...that was your motion. Call the next case."

At the October 16, 1968 hearing, the trial court revealed his confusion as to what was said and when. He admitted that, on August 9, 1968, Cushman "handed up something" which was the plaintiffs' motion to strike the defendants' petition (E.55,58-59), and that he handed it back to them (E.55). He then proceeded to contradict himself by fixing plaintiffs' motion to strike defendants' petition as being presented on August 19, 1968 when defendants presented their motion to vacate the August 9, 1968 order (E.60) and again contradicted himself by fixing the time as August 9, 1968 when he said (E.60):

> "I told Cushman that it wasn't necessary for him to file. We would take up your motion."

2. The trial judge confused the time of reading and argument at the August 19, 1968 hearing as having occurred on August 9, 1968.

a. Matchett's affidavit (E.49) establishes that the trial judge reluctantly read on August 19, 1968, when he served as an observer in his courtroom, a 2 page document only after repeated urging; that nothing was said that day, on hearing the defendants' motion to vacate the August 9, 1968 order which is sought to be vacated, and that the proceedings lasted but 3-4 minutes before the motion was denied on August 19, 1968 to vacate the said August 9, 1968 order.

b. Spira's affidavit (E.48) establishes that, when he served as an observer in his courtroom on August 9, 1968, he did not see the trial judge read or study any papers; that the plaintiffs' motion to strike was called on August 9, 1968; that he did not hear him tell Cushman he need not file it; and that the proceeding lasted but 5 minutes at the most before counsel retired to the conference room to draft the August 9, 1968 order when he left.

c. Hettleman's affidavit (E.46-47) establishes that the petition was admittedly quite thick (over 35 full legal size typed pages) and counsel were before the bench, on August 9, 1968, but a few minutes when the trial judge directed plaintiffs' attorneys to draw an order for his signature denying and dismissing the defendants' petition.

It is patent from the time factor alone, independently of the assertions and counter-assertions, that, even if plaintiffs' motion to strike had come on to be heard, on August 9, 1968, and defendants had argued the merits of their petition, that all this could not have transpired, including time to study the numerous issues and for sound judicial deliberation, in 5 minutes.

The judicial whimsy of the trial judge is further reflected in the assertion that there was argument, even tho it did not occupy a half day or a full day (R.C.129).

The only accurate statement, other than facts in the colloquy, on August 9, 1968, admitted by him is that "some statements" were made on August 9, 1968 by defendants about their petition to vacate the decree of July 13, 1966 (R.C.129). It is difficult, if not impossible, to conclude from the prefatory statement in the colloquy, and protest against the entry of a final order dismissing that petition for want of "oral argument" or "hearing" according to due process of law, that, on August 9, 1968, there was any discussion whatever on the issues in the suit then pending before the trial judge.

The trial judge's comments about argument on the issues or merits, and especially his characterization of Spira's affidavit of August 28, 1968 (E.22) as a "contemptible lie", caused filing of a motion for leave to file also another affidavit of Leo Spira (E.48), and the affidavits of Matchett (E.49) and Hettleman (E.46-47), all relating to what transpired on August 9 and 19, 1968. It was hoped there would be a formal hearing on the motion to give the trial judge a declined opportunity to examine and cross examine these affiants in order to impeach their credibility.

3. There can be no mistake of defendants' constant protest on the debatable question of whether they had a "hearing," within the due process clauses of the Federal and State constitutions, that they were denied their rights guaranteed thereunder, and the trial court's adverse

ruling.

a. Before the order of August 9, 1968 was drafted, the Record shows a protest in open court (E.26-27)

"Hettleman: I want the order to show that there has been no oral argument.
Judge O'Brien: Any way you want it."

b. Upon plaintiffs drawing the order in the conference room.

c. Upon the draft order being presented to the trial judge (E.27)

"Hettleman: I would like the order to show there was no hearing and no argument.
Judge O'Brien (signing the draft order): You presented the petition and there was a hearing.
Hettleman: This was a hearing?
Judge O'Brien: Yes."

d. The Report of Proceedings show repeated protests to the trial judge of a violation of defendants' guaranteed rights of procedural due process by his summary, imperious, and arbitrary conduct and refusal to permit them to request him to sign an order granting them time in which to file objections to the plaintiffs' motion to strike their petition and to set a time for hearing on the pleadings, and by repeated adverse rulings thereon. Kinbrough v. Parker, 407 Ill. 274, 278; The Peo. v. Bricker, 396 Ill. 140, 142.

(1) Proceeding on August 19, 1968:
(a) E.38. "The Court: And let the record show that I am denying the motion to vacate the order which I entered on August the 9th.
Mr. Hettleman: I want the record to show, your

Honor, that there was no argument and that the Court did not let me proceed."
The trial court's reference "That was all the argument I was going to hear" was to his abrupt statement in the colloquy (E.27) "I went into this case thoroughly over two years ago, and I don't want to go into it again." The petition to vacate his decree of July 13, 1966 was based on lack of jurisdiction over the subject matter which has never been argued before him. It is common sense that the issues raised in the 37 page, 13,000 word petition to vacate the decree could not be resolved intelligently in 5 minutes.

(2) Proceeding on August 30, 1968:
(a) E.40-41. "Hettleman: I want the record to show that I requested you Honor to state specifically wherein this (colloquy) is accurate and wherein it is inaccurate.
The Court: I can't remember now."

(3) Proceeding on October 16, 1968 (two months later)
(a) E.54. "The Court: I will not certify that I glanced at the copy (of defendants' petition to vacate July 13, 1966 decree) then. I read it.
Mr. Hettleman: You read what?
The Court: The petition is what you handed me.
Mr. Hettleman: Your Honor, it was a thick petition.
The Court: I know. I remember what it was.
Mr. Hettleman: And you just riffled and you didn't even look at the first page.
The Court: Well, I can't quite agree."
(b) E.55-56, a beautiful example of judicial whimsy. "The Court: If you consider oral argument taking a half a day or two days, then I will agree there was no oral agreement.
Mr. Hettleman: Your Honor, that isn't what this says. This says 'I want the order to show that there has been no oral argument.'
The Court: That's right.
Mr. Hettleman: Did I say that?
The Court: No, I don't---
Mr. Hettleman: Did I say it?
The Court: I don't recall you saying it.
Mr. Hettleman: Well, your Honor, I remember I was going with these gentlemen (Ludwig and Cushman to the conference room) and I said to your Honor: 'I want to show it' and then you said--- 'any way,' we walked away and went into that (conference) room.
The Court: I will not certify that."
(c) R.C.138, E.57, where the trial judge confused what was actually before him, on August 19, 1968, the motion to vacate his August 9, 1968 order; he thought the petition to vacate his July 13, 1966 decree was before him on August 19th and refused to be refreshed.

4. The defendants' Notice of Appeal (E.35) indicates they relied on the trial judge's above adverse rulings on denial of procedural due process, in violation of the Federal and State constitutions, for reverse of his judgment orders of August 9, 19, 1968. Orton Crane Co. v. Fed. Res. Bk., 409 Ill 285, 289.

"Hearing" was defined in Gleason v. Barth, 155 Ill. 232, 243, as a judicial examination of the issues between the parties.

In affirming a lower court order permitting a plaintiff to dismiss his suit before "hearing," the Court, in Matthews v. Weiss, 15 Ill.App. 2d 530, 532 (3rd Dist., 1958), stated:

> "The sole question is whether, on the record before us, a hearing had begun, and this must be answered in the negative. It would seem that the mere recital of the foregoing facts as reflected by the record, should be sufficient to demonstrate that no hearing had begun in this case. The word 'hearing' is a familiar term and is generally understood as meaning a judicial examination of the issues between the parties, whether of law or of fact. Anthony v. Gilbrath, 396 Ill. 125, 71 N.E.2d 84. Until such time as the motion and showing in support thereof together with the counter showing, if any, had been presented to the court for consideration and determination, no hearing had begun."

In reversing an order refusing filing by a taxpayer of his petition challenging expenditures by the legislature for judicial investigations, this Court stated in Greenfield v. Russel, 292 Ill. 392, 401:

> "A judicial investigation should at all times proceed in an orderly manner before a tribunal legally constituted to make such investigation and in such a manner as to give all parties thereby affected a complete and full hearing and an adjudication that will determine and settle the rights of the parties."

In Jamal v. Jamal, 98 Ill. App. 2d 180 (1st Dist., 1968), the trial

judge suddenly broke off his preliminary examination and announced his decision, despite the denied request for cross-examination. Said that Court, speaking through Mr. Justice English, at 185:

> "In a court of law this sort of procedure would be highly erroneous; in a court of conscience, it is unconscionable. The rights to cross-examine and to present evidence are so basic as to be grounded in due process. Collectively, they constitute the litigant's day in court. Ill. Const.,art. II, s. 2; People ex rel Bernat v. Hicks, 405 Ill. 510, 526; Pettigrew v. Nat'l Acc System, 67 Ill. App.2d 344, 350-51; Gorin v. McFarland, 80 Ill. App.2d 398, 408....We conclude that the procedure followed in the instant case effectively denied the plaintiff her day in court, and the resulting order must therefore be reversed and remanded for a proper hearing."

Holding that the trial judge should have given the defendants a reasonable time to file a petition for a change of venue before entering an injunction against them, the Court, speaking through Mr. Justice Charles H. Davis, a former member of this Court, in Hindelink v. Inn of the Four Lakes, 98 Ill.App.2d 42, 48, (2nd Dist., 1968), said, citing and quoting from his opinion in Pettigrew v. Nat'l Accs. System, 67 Ill. App.2d 344, 350, 351:

> "The procedure followed by the court was so lacking in principles basic to our system of justice that it offends the system."

Pettigrew v. Nat'l Accs. System, 67 Ill. App.2d 344 (2nd Dists., 1966), has features strongly similar to those in this case. Pettigrew had filed a declaratory judgment suit against National which, thereupon, notified Pettigrew it would present a petition for a preliminary injunction against him. When Pettigrew appeared in response to this notice, the trial judge ordered a consolidation of both suits and direct-

ed Pettigrew to proceed forthwith on the merits of his suit and the defence against the preliminary injunction suit, althe Pettigrew's time to file an answer in the latter suit had not then expired. Pettigrew's attorney protested this procedure, but the trial judge dismissed Pettigew's complaint and granted a permanent injunction against him. Said Mr. Justice Charles H. Davis, speaking for that Court, at p. 350:

> "The procedural aspects of due process and equal protection of the laws require that a person be given notice and an opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case" quoting this Court in City of Chicago v. Cohn, 326 Ill. 372,374-75 which had quoted Webster's famous definition of due process of law in the Dartmouth College case, and concluded, at p. 351: "A fundamental requisite of process is that every man shall have the protection of his day in court and the benefit of an orderly proceeding according to the general law or established rules; and that the hearing shall not be arbitrary, but rather shall afford to him an opportunity to be heard in his defense and shall assure to him an inquiry on the issues of the case, wherein judgment is rendered only after trial. There must be an intrinsic fairness of procedure by which any judgment, order or decree is rendered. This is essential to the untainted administration of justice—the most cherished aspect of our judicial system.
>
> Tested by these standards, we find that appellants were not afforded the due process guaranteed them by our Constitutions."

## APPENDIX L

### SECTION 4.

#### The Executive Committee

There shall be an Executive Committee of the Institute composed of the officers and managers. The Committee shall have power to admit members from time to time, to establish and alter rules and regulations for the use of the library and other property of the Institute, to impose fines and penalties for breach of such rules and regulations and of the By-Laws, and to exercise a general control and supervision over the affairs of the Institute, and over its officers, committees and empioyes.

Such of these By-Laws as appertain to the use of the library are subject to change by the Executive Committee, and the Committee may make any additional rules and regulations, and change or repeal any such By-Laws.

The Executive Committee shall make Rules and Regulations regarding the use of the library books and withdrawal thereof, periodicals and all other property of the Institute, the conduct of its members and all persons using the library and property of the Institute.

Only upon the orders and appropriations made therefor by the Executive Committee shall purchases be made and liabilities of any kind contracted.

The Executive Committee may set aside a surplus fund or funds to be invested in good interest bearing securities in such manner as it may from time to time determine,

such surplus fund or funds to be held for future contingencies, such as renting quarters if necessary or advisable to do so or for acquiring grounds and building for the purpose of housing the library, or for such other purposes as it may determine.

The Executive Committee may from time to time confer upon a graduate student of each of the local law schools the free use of the library for one year after graduation; *provided,* the respective Faculty thereof shall first nominate such student to the Institute for such use as a reward for excellence in scholarship, a thesis on the efficient use of law books, or some other superior work, while a student therein.

SUPREME COURT, U. S.

In The

# Supreme Court of the United States

October Term, 1973

Supreme Court, U. S.
FILED
SEP 5 1974
MICHAEL RODAK, JR., CLERK

## No. 74-66

WILLIAM HETTLEMAN, ET AL.,

*Petitioners,*

vs.

THE CHICAGO LAW INSTITUTE, ETC., ET AL.,

*Respondents.*

On Petition for a Writ of Certiorari
to the Supreme Court of Illinois

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In The

# Supreme Court of the United States

October Term, 1973

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WILLIAM HETTLEMAN, ET AL.,

*Petitioners,*

vs.

THE CHICAGO LAW INSTITUTE, ETC., ET AL.,

*Respondents.*

On Petition for a Writ of Certiorari
to the Supreme Court of Illinois

---

## BRIEF FOR RESPONDENTS IN OPPOSITION

---

Respondents Chicago Law Institute, County of Cook, Edward L. Arkema and John O'Brien respectfully move the Court, pursuant to Rule 24 of the Revised Rules of this Court, to deny the Petition of William Hettleman and Palmer D. Edmunds for a Writ of Certiorari to the Supreme Court of Illinois. In support of their motion, Respondents respectfully state that the Petition on its face fails to demonstrate the jurisdiction of this Court over the subject matter of the Petition, and also fails to state any sound reason why this Court, in its discretion, should issue a Writ of Certiorari to the Supreme Court of Illinois for further proceedings herein.

## OPINION AND ORDERS BELOW

Petitioners pray that a Writ of Certiorari issue to review the Orders entered by the Supreme Court of Illinois on September 22, 1970 (Pet. App. B), January 30, 1974 (Pet. App. F) and March 21, 1974 (Pet. App. G). On August 9, 1968, Petitioners had moved to vacate the final decree entered by the Circuit Court of Cook County, Illinois on July 13, 1966 (Pet. App. AA). However, the Circuit Court of Cook County denied Petitioners' Petition for Relief under §72 of the Illinois Civil Practice Act. On August 19, 1968, Petitioners moved to vacate the Order of August 9, 1968, but the Circuit Court of Cook County denied that motion as well.

Petitioners sought appeal from the Orders of August 9, 1968, and August 19, 1968, directly to the Supreme Court of Illinois, on the ground that various constitutional issues were involved, but the Supreme Court of Illinois transferred the case to the Illinois Appellate Court, First District, on September 22, 1970, on the ground that no substantial constitutional questions were presented (Pet. App. B). Petitioners moved for reconsideration of the Order of Transfer, but their motion was denied on November 12, 1970.

On September 13, 1973, the Illinois Appellate Court, First District, dismissed the Petitioners' Appeal and affirmed the Orders entered August 9, 1968, and August 19, 1968, in the Circuit Court of Cook County (Pet. Exh. E).

Petitioners next sought leave to appeal from the decision of the Illinois Appellate Court, First District, entered on

September 13, 1973, but the Illinois Supreme Court denied their Petition for Leave to Appeal on January 30, 1974 (Pet. App. F), and thereafter denied their Petition for Reconsideration on March 21, 1974 (Pet. Exh. G). It is to review the Orders of the Supreme Court of Illinois entered on September 22, 1970 (transfer to Illinois Appellate Court, First District) (Pet. App. B), on January 30, 1974 (denying Petition for Leave to Appeal) (Pet. App. F), and on March 21, 1974, (denying motion for reconsideration) (Pet. App. G) for which Petitioners now ask this Court to issue a Writ of Certiorari.

## JURISDICTION

Petitioners rely on Title 28 U.S.C. Section 1257(3) as permitting review by this Court by Writ of Certiorari. However, Petitioners' reliance on §1257(3) is misplaced, inasmuch as review thereunder is limited to Federal questions, and the Federal questions of which Petitioners seek review were not passed on by the Courts of Illinois.

## QUESTIONS PRESENTED

### I.

Does a Petition for Writ of Certiorari conform to the requirements of Rule 23 where Petitioners have failed to show that the Federal questions sought to be reviewed were properly raised in the State courts?

**II.**

Does the jurisdiction of the Supreme Court of the United States attach on a Petition for Writ of Certiorari where Federal Constitutional questions are not involved and the orders of the State trial, Appellate and Supreme courts do not mention, discuss or pass on any Federal questions?

**III.**

Does the jurisdiction of the Supreme Court of the United States attach on a Petition for Writ of Certiorari where the decisions of the State courts rest on adequate non-Federal grounds?

**IV.**

Does a Petition for Writ of Certiorari conform to the requirements of Rule 19 where the Petition fails to demonstrate the requisite "special and important reasons"?

**V.**

Can the jurisdiction of the Supreme Court of the United States attach at this time to review a non-final order entered by the Supreme Court of Illinois on September 22, 1970?

## STATUTES INVOLVED

**Title 28 U.S.C. Section 1257**

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

• • •

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

**Title 28 U.S.C. Section 2101**

• • •

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

**Illinois Civil Practice Act, § 72**

"(1) Relief from final orders, judgments and decrees, after 30 days from the entry thereof, may be had upon petition as provided in this section. Writs of error coram nobis and coram vobis, writs of audita querela, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtain-

able and the grounds for said relief heretofore available, either at law or in equity, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order, judgment or decree from which relief is sought or of the proceedings in which it was entered. There shall be no distinction among actions at law, suits in equity and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.

"(2) The petition must be filed in the same proceeding in which the order, judgment or decree was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the petition shall be notified as provided by rule."

## RULES OF COURT INVOLVED

### United States Supreme Court Rule 19

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

"(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

### United States Supreme Court Rule 23

"1. The petition for writ of certiorari shall contain in the order here indicated—

• • •

"(f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari."

**Illinois Supreme Court Rule 315**

"(a) *Petition for Leave to Appeal; Grounds.* A petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed."

## STATEMENT

Petitioners have petitioned for a Writ of Certiorari to the Supreme Court of Illinois seeking review by this Court of Orders entered by the Supreme Court of Illinois on September 22, 1970, January 30, 1974, and March 21, 1974. A Complaint for Declaratory Judgment had been filed in the Circuit Court of Cook County, Illinois, in Case No. 65 CH 6863 on December 10, 1965, by The Chicago Law Institute and two of its members. The Complaint recited why The Chicago Law Institute could not continue to operate in competition with the free law library proposed by the County of Cook. Named as defendants were the Attorney General of Illinois, the County of Cook, and a representative number of members of The Chicago Law Institute, including some who were opposed to the relief requested. The prayer for relief requested that the Circuit Court of Cook County, sitting as a Court of Chancery, approve an agreement by and between The Chicago Law Institute and the County of Cook to transfer the Institute's library and other assets to the County to be used as or as a part of the County's law library, and authorize the Institute and the County to carry such an agreement into execution.

The Circuit Court of Cook County, after extensive hearings and briefs had been had in the matter, entered a final decree in Case No. 65 CH 6863 on July 13, 1966. The decree approved the agreement entered into by and between The Chicago Law Institute and the County of Cook providing for the Institute to turn over its law library and other assets to the County, to become the nucleus of a law library, operated and maintained by the County of Cook.

Subsequent to the entry of the final decree in Case No. 65 CH 6863, William Hettleman and Palmer D. Edmunds (Petitioners herein), and J. Edward Jones sought review by Appeal in this Court in Case No. 961 (October Term, 1967) of an Order entered June 20, 1967 by the Supreme Court of Illinois. In that Order, the Supreme Court of Illinois denied Petitioners' Motion to reconsider its denial of Petitioners' Petition for leave to appeal under Section 76 of the Illinois Civil Practice Act. In their Jurisdictional Statement to this Court in Case No. 961, Petitioners claimed to present to the Court the questions of whether the actions of the trial judge in Case No. 65 CH 6863 violated Petitioners' constitutional rights (Jurisdictional Statement Pages 8 to 10) and whether the execution of a contract, and suit to seek approval thereof, violated Petitioners' constitutional rights (Jurisdictional Statement Pages 6 to 7). This Court on March 11, 1968, granted Respondents' Motion to Dismiss the appeal in No. 961, for want of jurisdiction. Treating the papers whereon the appeal was taken as a Petition for Writ of Certiorari, this Court also denied certiorari. *Hettleman* v. *Chicago Law Institute*, 390 U.S. 338 (1968). On April 22, 1968, this Court denied Petitioners' Petition for Rehearing in Case No. 961. *Hettleman* v. *Chicago Law Institute*, 390 U.S. 1036 (1968).

After the entry of this Court's Orders in Case No. 961, Petitioners herein sought review in the Circuit Court of Cook County, Illinois, on August 9, 1968, of the final decree entered on July 13, 1966. The trial court on August 9, 1968 denied Petitioners' Petition, pursuant to §72 of the Illinois Civil Practice Act, and on August 19, 1968, the trial court also denied Petitioners' Petition to vacate the order of August 9, 1968.

Petitioners appealed from the Orders of August 9, 1968 and August 19, 1968 directly to the Supreme Court of Illinois, but that Court on September 22, 1970 concluded that it did not have jurisdiction on direct appeal for want of the existence of any substantial constitutional questions, and transferred the cause to the Appellate Court, First District. On September 13, 1973, the Appellate Court dismissed Petitioners' appeal and affirmed the judgments of the trial court entered on August 9, 1968 and August 19, 1968. After the Appellate Court denied Petitioners' Petition for rehearing of its September 13, 1973 Order, Petitioners petitioned the Supreme Court of Illinois pursuant to Rule 315 of the Rules of the Supreme Court of Illinois, for leave to appeal to that Court. That Petition was denied on January 30, 1974, and on March 21, 1974, the Supreme Court of Illinois denied Petitioners' Petition for reconsideration of its January 30, 1974 Order.

## ARGUMENT

Petitioners have failed to conform to the requirements of Rule 23(1)(f) of the Revised Rules of this Court in that Petitioners have not demonstrated how the Federal questions sought to be reviewed were raised and passed upon in the Courts of Illinois. Furthermore, Petitioners have failed in their Petition to establish the jurisdiction of this Court to issue a Writ of Certiorari to the Supreme Court of Illinois pursuant to Title 28 U.S.C. Section 1257 (3), and do not comply with the time requirements of Title 28 U.S.C. Section 2101(c). Finally, Petitioners have failed to conform to the requirements of Rule 19 of the Revised Rules of this Court in that the Petition does not demonstrate the requisite "special and important reasons" for granting certiorari in the exercise of the sound judicial discretion of this Court.

### I.

### THE PETITION FOR WRIT OF CERTIORARI FAILS TO CONFORM TO THE REQUIREMENTS OF RULE 23(1)(f) OF THE REVISED RULES OF THIS COURT.

Rule 23(1)(f) of the Revised Rules of this Court sets out at some length just what is to be included in a Petition for Writ of Certiorari. If Certiorari is sought to review a decision of a State court, the Petition should include a description of the manner in which the Federal question was presented. The showing as to how the Federal question was raised and passed on in the State courts is to be made with considerable particularity.

The Petition for Writ of Certiorari fails to conform to the requirements of Rule 23(1)(f) of the Revised Rules of this Court, and therefore is insufficient to establish the jurisdiction of this Court to review the judgment of the Supreme Court of Illinois on Writ of Certiorari, for the following reasons:

1. Petitioners have failed to specify the stages in the proceedings in the Circuit Court of Cook County, in the Illinois Appellate Court, and in the Illinois Supreme Court at which, and the manner in which, the Federal questions sought to be reviewed were raised.

2. Petitioners have failed to specify the method of raising the Federal questions sought to be reviewed.

3. Petitioners have failed to specify the way in which the Federal questions sought to be reviewed were passed upon by the Circuit Court of Cook County, the Illinois Appellate Court, and the Illinois Supreme Court.

4. Petitioners have failed to quote those portions of the record and have failed to refer to those places in the record containing the matters which allegedly support Petitioners' assertion that the rulings of the State courts are of a nature to bring the case within Title 28 U.S.C. Section 1257(3) conferring jurisdiction on this Court.

Accordingly, Respondents respectfully submit that the Petition for Writ of Certiorari is insufficient, under the Revised Rules of this Court, to demonstrate jurisdiction to hear the Federal questions sought to be reviewed on certiorari to the Illinois Supreme Court. This Court should not take jurisdiction to review the orders of the State courts, and the Petition for Writ of Certiorari should be denied.

## II.

### THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE NOT PASSED ON BY THE COURTS OF ILLINOIS.

Petitioners appear to contend that certain Federal constitutional rights have been violated by actions of the Circuit Court of Cook County, both in granting summary judgment in favor of the Respondents and also in denying Petitioners any relief under §72 of the Illinois Civil Practice Act. Apparently, Petitioners further contend that they have in some way been denied due process of law. They rely on Title 28 U.S.C. Section 1257(3) as their basis for petitioning to this Court for Writ of Certiorari to review Orders of the Illinois Supreme Court. But §1257(3) does not support Petitioners' reliance, and it does not sustain the Petition for Writ of Certiorari in this case.

Petitioners' conclusory allegations, unsupported by any allegations of fact, are clearly insufficient to establish the jurisdiction of this Court to hear and determine a Petition for Writ of Certiorari under §1257(3). Dispositive of the question of the jurisdiction of this Court to hear this cause pursuant to §1257(3) is the plain fact that nowhere in any of the proceedings had in this matter in any of the courts of Illinois have any Federal rights, privileges, or immunities been considered, passed on, or disposed of. The Federal constitutional questions which Petitioners seek to have reviewed by means of their Petition for Writ of Certiorari have never been passed on by the trial court or the Illinois Appellate Court or the Illinois Supreme Court. Title 28 U.S.C. Section 1257(3) therefore is inapplicable to this case and cannot establish the jurisdiction of this Court to consider a Petition for Writ of Certiorari.

The burden is clearly on Petitioners to demonstrate that a Federal question was presented to the State court and that a decision on such a question was necessary to a determination of the cause. Thus, where the highest State court delivers no opinion rendering its judgment, and both Federal and non-Federal questions have been raised, this Court ordinarily presumes that the State court's decision is based on a non-Federal ground and jurisdiction will be declined. *Lynch* v. *New York ex rel. Pierson*, 293 U.S. 52, 54-55 (1934); *Phyle* v. *Duffy*, 334 U.S. 431 (1946); *Stembridge* v. *Georgia*, 343 U.S. 541, 547 (1952). Where adequate State grounds are asserted and appear reasonable, "petitioner, in order to establish [the Court's] jurisdiction, must demonstrate that neither of these state grounds can account for the decision below." *Durley* v. *Mayo*, 351 U.S. 277, 281 (1956), *reh. den.*, 352 U.S. 859 (1956). The burden of establishing jurisdiction is not met if "it appears that the judgment [below] *might* have rested upon a non-federal ground." *Durley* v. *Mayo*, 351 U.S. 277 (1956), *reh. den.*, 352 U.S. 859 (1956); *Stembridge* v. *Georgia*, 343 U.S. 541, 547 (1952); *Ellis* v. *Dixon*, 349 U.S. 458 (1955).

Respondents respectfully submit that the decisions of the Illinois Supreme Court of which Petitioners now seek review upon certiorari are based solely upon adequate non-Federal grounds. The denial by the trial court on August 9, 1968, of the Petition for Relief under §72 of the Illinois Civil Practice Act was based solely on the insufficiency of that Petition to warrant relief under §72 of the Illinois statute. The only issue in the Illinois Appellate Court, First District, on September 22, 1973, when that court dismissed Petitioners' appeal and affirmed the judgments of the trial court entered on August 9, 1968 and

August 12, 1968, was whether or not the trial court had abused its sound judicial discretion in denying Petitioners relief under §72 of the Illinois Civil Practice Act. Furthermore, leave to appeal pursuant to Rule 315 of the Rules of the Supreme Court of Illinois clearly is a matter within the sound discretion of the Supreme Court of Illinois, and whether or not to exercise that discretion was the sole issue before that court on January 30, 1974, when it entered the Order denying the Petition for Leave to Appeal, review of which is now asked by certiorari. Thereafter, on March 21, 1974, the Supreme Court of Illinois denied a further petition for reconsideration of the prior Order of January 30, 1974.

In all of the above instances, the Orders do not mention, do not discuss and do not pass on any constitutional or other Federal questions such as Petitioners ask this Court to review. Accordingly, Respondents respectfully submit that the proceedings in the Illinois courts clearly have not involved any Federal questions and that Petitioners therefore cannot establish Federal jurisdiction under §1257(3) based on a claim that the Orders of the Illinois courts which Petitioners seek to have reviewed involve any Federal questions. Therefore, the Petition for Writ of Certiorari should be denied.

## III.

### THE JUDGMENTS SOUGHT TO BE REVIEWED REST ON AN ADEQUATE NON-FEDERAL BASIS.

The Orders of the Illinois Supreme Court entered on September 22, 1970, January 30, 1974, and March 21, 1974, respectively, which Petitioners seek this Court to review by certiorari, clearly rest on Petitioners' failure to comply with the applicable provisions of the Illinois Civil Practice Act and the Illinois Supreme Court Rules. Thus, the Orders

which Petitioners seek to have reviewed upon certiorari rest on adequate and independent non-Federal grounds of decision.

The rulings of the Illinois Supreme Court on the three dates in question are grounded on State procedure under the Illinois Civil Practice Act and the Illinois Supreme Court Rules. So long as the local procedure does not discriminate against the raising of Federal claims and has not been used to stifle a Federal claim or to evade a vindication of Federal rights, this Court will respect local procedural requirements. See *Davis* v. *Wechsler*, 263 U.S. 22, 24-25 (1923). Accordingly, Respondents respectfully submit that each State court judgment is based on a non-Federal ground, and that the non-Federal ground is *adequate* to support the State court judgment. Therefore, this Court lacks jurisdiction under Title 28 U.S.C. Section 1257 (3) to review the Orders which Petitioners seek to have reviewed. When "there can be no pretense that the [state] Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any Federal question, this Court accepts the decision whether right or wrong." *Nickel* v. *Cole*, 256 U.S. 222, 225 (1921); see also *Atlantic Coast Line R.R. Co.* v. *Mims*, 242 U.S. 532, 536-537 (1917).

The issues in the appellate proceedings prosecuted in the Illinois courts by Petitioners have related wholly to questions of whether or not compliance has been had with the Illinois Supreme Court Rules and the Illinois Civil Practice Act governing appeals. The record of determination to date includes the following:

1. On September 22, 1970, the Illinois Supreme Court transferred Petitioners' direct appeal to the Illi-

nois Appellate Court, First District, on the ground that the requisite substantial constitutional questions necessary to sustain direct appeal as a matter of Illinois law were not present.

2. On September 22, 1973, the Illinois Appellate Court dismissed Petitioners' appeal and affirmed the judgments of the trial court entered August 9, 1968 and August 19, 1968, presumably on the ground that the trial court had not abused its sound judicial discretion in denying relief under §72 of the Illinois Civil Practice Act.

3. On January 30, 1974, the Illinois Supreme Court denied Petitioners' Petition for leave to appeal, leave to appeal being a matter clearly within the discretion of the Illinois Supreme Court under Rule 315 of the Rules of the Supreme Court of Illinois.

4. On March 21, 1974, the Illinois Supreme Court denied Petitioners' Petition for reconsideration of the Order entered on January 30, 1974, denying the Petition for leave to appeal, presumably on the ground that the judgment of January 30, 1974 had been correct and that further reconsideration by the Court was not warranted.

Leave to appeal to the Illinois Supreme Court, as sought by the Petitioners in this case, was not a matter of right, but was a matter for the discretion of the Illinois Supreme Court. The Petitioners made no showing whatever to warrant consideration for leave to appeal under Illinois Supreme Court Rule 315(a), although they clearly had the burden of showing why review was warranted. Accordingly, the Illinois Supreme Court properly denied them leave to appeal.

Respondents respectfully submit that the Supreme Court of Illinois based its Orders of September 22, 1970, January 30, 1974 and March 21, 1974, upon substantial and sufficient non-Federal grounds of decision. Accordingly, this Court should not take jurisdiction to review those orders. *Durley v. Mayo*, 351 U.S. 277 (1956), *reh. den.* 352 U.S. 859 (1956). The Petition for Writ of Certiorari should be denied.

## IV.

### THE PETITION FOR WRIT OF CERTIORARI FAILS TO CONFORM TO THE REQUIREMENTS OF RULE 19 OF THE REVISED RULES OF THIS COURT.

Rule 19 of the Revised Rules of this Court sets out at some length the considerations which govern the Court in granting review on certiorari. Rule 19 states clearly that "[a] review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." In the absence of a sufficient showing of the requisite special and important reasons for granting the writ, the Court, in the exercise of its sound judicial discretion, should deny a Petition for Writ of Certiorari.

This Petition for Writ of Certiorari is not the first time that the Petitioners have come before this Court upon appeal from the final decree of the Circuit Court of Cook County, Illinois, entered on July 13, 1966, in Case No. 65 CH 6863. In their Jurisdictional Statement filed in prior docket number 961 (October Term, 1967), the Petitioners herein sought to raise the issues of the trial court's power to issue the decree in question (Jurisdictional Statement, Docket 961, pages 8-10) and of the trial judge's failure to excuse himself from the trial proceedings (Jurisdictional

Statement, Docket 961, pages 8-10), both of which issues the same Petitioners seek to raise in this Petition for Writ of Certiorari (Petition, page 6).

In Docket No. 961 (October Term, 1967), this Court dismissed, for want of jurisdiction, the appeal of Messrs. Hettleman and Edmunds, and considering their appeal as a Petition for Writ of Certiorari, also denied the Petition. *Hettleman* v. *Chicago Law Institute,* 390 U.S. 338 (1968); *reh. den.* 390 U.S. 1036 (1968).

Thus, the remaining issue now advanced by Petitioners merely involves the decision of the trial court in August, 1968, to deny Petitioners' motion to vacate the final decree entered by the trial court on July 13, 1966, which decree, as discussed *supra,* has already withstood the scrutiny of the appellate process, including dismissal of an appeal and denial of a Petition for Writ of Certiorari by this Court in *Hettleman* v. *Chicago Law Institute,* 390 U.S. 338 (1968); *reh. den.* 390 U.S. 1036 (1968).

Petitioners have failed to state any meritorious reasons demonstrating why the questions presented are so special or important, within the meaning of Rule 19 of the Revised Rules of this Court, as to warrant the Court in granting certiorari in the exercise of its sound judicial discretion. Accordingly, the Petition should be denied.

## V.

**REVIEW BY CERTIORARI OF THE ORDER ENTERED BY THE SUPREME COURT OF ILLINOIS ON SEPTEMBER 22, 1970 IS BARRED BOTH BY THE REQUIREMENT OF FINALITY AND ALSO BY THE REQUIREMENT OF SECTION 2101(c) GOVERNING TIME WITHIN WHICH TO PETITION.**

Review by certiorari of the Order entered by the Illinois Supreme Court on September 22, 1970 is barred both by the requirement of finality and also by the requirement of Title 28 U.S.C. Section 2101(c) governing time within which to petition.

Title 28 U.S.C. Section 1257(3) provides for review by the Supreme Court of the United States by Writ of Certiorari of certain "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." In their Petition for a Writ of Certiorari, Petitioners pray that a Writ of Certiorari issue to review the judgment of the Illinois Supreme Court entered on September 22, 1970. However, the decision of the Illinois Supreme Court entered on that date, transferring Petitioners' cause to the Illinois Appellate Court, First District, is clearly not a "final judgment or decree" within the meaning of §1257.

Furthermore, Title 28 U.S.C. Section 2101(c) bars any review by writ of certiorari of the Order of the Illinois Supreme Court entered on September 22, 1970. Section 2101(c) requires that "[a]ny other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of

the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

The Order of Transfer entered by the Illinois Supreme Court on September 22, 1970, clearly was entered more than ninety days prior to the filing of the Petition for Writ of Certiorari, which occurred on August 5, 1974. There has been no compliance whatever with the time requirements of Title 28 U.S.C. Section 2101(c), and accordingly, the Petition for Writ of Certiorari to review the judgment of the Illinois Supreme Court entered on September 22, 1970, even if otherwise reviewable by this Court, is barred, for having been untimely filed.

## CONCLUSION

Respondents respectfully submit that the Federal questions which Petitioners seek to have reviewed were not passed on by the courts of Illinois and that the judgments of the Illinois Supreme Court which Petitioners seek to have reviewed rest on an adequate non-Federal basis.

Respondents also submit that the Petitioners have failed altogether to state any special and important reasons for this Court to grant review upon Writ of Certiorari, in its sound judicial discretion; on the contrary, the issues in this case are solely questions of State procedure under the Illinois Civil Practice Act and the Illinois Supreme Court Rules, and review upon Writ of Certiorari is not warranted.

Finally, the Petition for Writ of Certiorari as to the Order of September 22, 1970, should be denied because that Order is not a final judgment or decree, within the meaning of Title 28 U.S.C. Section 1257, and also because the Petition is barred by the 90-day requirement (subject to 60-day extension) of Title 28 U.S.C. Section 2101(c) concerning appeals and writs of certiorari.

The Petition for Writ of Certiorari should, therefore, be denied.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

## No. 74-66

**WILLIAM HETTLEMAN and PALMER D. EDMUNDS,**

*Petitioners,*

vs.

**THE CHICAGO LAW INSTITUTE, et al. and THE COUNTY OF COOK, ILLINOIS,**

*Respondents.*

## PETITIONERS' REPLY BRIEF

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*Respondents.*

## PETITIONERS' REPLY BRIEF

The brief in opposition, filed September 5, 1974, fails almost completely to meet the petition. In addition, it misstates the record at a number of places. The most urgent matters requiring correction will be dealt with first. The more basic errors will be treated as summarily as possible.

## I. The Complaint Was Not For Declaratory Judgment.

P. 8, Br. Opp. states that the complaint filed on December 10, 1965, docketed as 65 CH 6863, was such. This false characterization was made because this Court will not generally invade the province of a state court to find the facts, as a determination in such suit requires. The very first sentence of Judge O'Brien's Opinion (Pet. App. A, p. 1a) stated that "the real questions to be decided are questions of law." The Illinois Declaratory Judgment Act is in the Ill. Rev. Stat., c. 110, sec. 57.1. Nowhere did the complaint refer to this section of the Civil Practice Act, or indicate that adjudication was prayed thereunder. In sum, unsupported allegations were made that sometime in the distant future The Chicago Law Institute (hereinafter referred to as Institute) assets will be wholly lost, destroyed and dissipated by Respondent Cook County's offer to the public of a free law library, wherefore the Institute members would be unwilling to continue to pay annual assessments. Prior to the special meeting of its members on June 18, 1965, a survey was made whether they would continue to pay assessments tho they could use a free law library created by Cook County. Letters of intention poured in without a single dissent. A moment's reflection told them it would take years and years, and several million dollars, for the accumulation of anything approaching a duplication of the Institute's 150,000 volumes.

In *Gilman* v. *Hamilton*, 16 Ill. 225, *cy pres* was sought to be invoked unsuccessfully, the Court saying, at pp. 228-29:

> "I am not able to resist the impression that the chancellor was only asked to become the passive instrument to record the arrangement and agreement of the parties by way of decretal sanction . . . But I might admit even that it never could become sufficient, and

> still it may not show a total failure of the charity; others may contribute other means and funds may be obtained, and the end accomplished."

The Court regarded all the allegations about the direct consequences to befall the charity as purely speculative and conjectural.

If 65 CH 6863 were a declaratory judgment suit, it must have been dismissed as based on conjecture as to whether some future possibility might occur. *State Farm Mutual Auto. Ins. Co.* v. *Morris,* 29 Ill. App. 2d 451, 467-8.

65 CH 6863 began as a class suit, but was amended to strike out the operative words. The summary judgment and decree sought to be vacated are thus null and void for want of indispensable parties. *Southeast Nat'l Bk.* v. *Bd. of Education,* 298 Ill. App. 92, which quoted from Story's *Equity* at pages 115-124.

Of course, *cy pres* is inapplicable to a private corporation, or to a charitable one, or to a charitable trust creating a law library for the mutual benefit of its members or beneficiaries. C. J. Richardson in *The Trustees of Dartmouth College* v. *Woodward,* 1 N.H. 111, 124-25, referring to privileges incident to membership as in incorporated library companies.

## II. The Institute Library Was Substantial.

P. 8, Br. Opp., last sentence, seeks to create an impression that review is sought on a trifling matter, only a "nucleus" of a library for Cook County, which does not merit this Court's attention and time. The Record shows that it took almost 100 years to accumulate this "nucleus"; that, at the time of taking it had about 150,000 law books; that it ranked

among the 15 largest in the United States; that it was the largest circulating law library in the world; that it was world renowned, as the 1963 so-called Harrington Report stated. Among its corporate founders in 1857 were alumni of the Harvard and Yale Law Schools. A Harvard alumnus served on its Executive Committee each year from 1858 thru 1948 when some of the clique responsible for conspiring with Cook County to repeal its charter and to take all its assets for a public use without pay, pulled a coup d' etat which cannot be reviewed here. The Institute membership included lawyers of national repute. Its president for some years was Melville W. Fuller, later Chief Justice of this Court. Robert Todd Lincoln was an officer. After the Great Chicago Fire in 1871, Dean Langdell of the Harvard Law School on the request of its alumni Institute members, sent law books to reactivate the Institute. No other law library in the United States, unless it be that of the Library of Congress, has the Session Laws of the Illinois Legislature dating back to colonial days.

It has survived Wars (Civil, Spanish American, Wars I and II, and Korean); panics (1873, 1893, 1907, 1914, 1930, 1947); other competitors, including the Chicago Bar Association which Institute leaders helped found as they did the Chicago Public Library. When 65 CH 6863 was filed prophesying its death by the big paper tiger, it had no loans against any assets and was in a current ratio position of about 90:1. After the Civic Center was completed, in early 1966, the Chicago newspapers carried stories of "Library Without Books" and similar titles. This goaded the physical seizure in August, 1966. "Nucleus", indeed! It was all ready-made to collect the $1 tax on all parties to a suit.

## III. No Reviewing Court Passed On Merits.

Judge O'Brien decided (App. A, pp. 1a-3a) that the Institute members had no rights in its assets upon dissolution, and that Sec. 4 of its By-Laws (App. L) conferred an absolute power on its Executive Committee to give all its assets to Cook County, regardless of the almost unanimous vote of its members, at the special June 18, 1965 meeting, against making such gift; against dissolution; and against permission to the Executive Committee to file any suit in Chancery. These rulings are erroneous. Pp. 18-19, Br. Opp., seeks to create the impression that this Court, in Case No. 961, by dismissing the appeal and denying it as certiorari, adjudicated these issues. Appellees therein sought to get this Court to affirm. That appeal was dismissed for want of jurisdiction because the wrong method was used. The petitioners could not allege, due to absence of any opinion, that their federal claims were passed upon and found wanting. In any event, the individual justices of this Court, past and present, have, in speeches in New York, Philadelphia, Texas, Australia, and in articles in numerous law reviews, and in opinions, as has the Court itself, repeated that the denial of certiorari has no legal significance on the merits of the litigation. It would be disrespectful to this Court to cite any citations on this point.

Nor have the Illinois Supreme and Appellate Courts passed on the merits, as will be shown in discussing the more basic issue of non-federal ground.

## IV. The Proceeding On August 2, 1968 Was A Travesty On Justice.

P. 9, Br. Opp., last paragraph, makes it appear that petitioners initiated the proceedings before Judge O'Brien on that date. The true facts are stated fully in their main brief

at pp. 16-19, and summarized in the Pet. Cert., pp. 14-15, and the following colloquy, when the parties appeared before Judge O'Brien then, pursuant to respondents' notice, and petitioner Hettleman made the statement of having filed the petition to vacate his decree, preparatory to a request for time in which to object and to set the matter down for hearing on the said petition and motion to dismiss it, confirmed by draft order to that effect which is in the record:

> "Judge O'Brien (glancing at copy of petition, affidavit, and exhibits): What do you expect me to do? Embrace you?
>
> Hettleman: No. Here's a copy of the plaintiffs' Motion to strike the petition.
>
> Cushman: Judge, this is our Motion."

The more basic errors in respondents' brief:

**A. Rule 23 was fully complied with.**

Pp. 14-19 cite chapter and verse in the Petition to Vacate the Summary Judgment and Decree of each federal claim presented therein. The above colloquy (App. K) was referred to wherein petitioners protested vehemently and constantly to Judge O'Brien and opposing counsel that the proceeding on August 9, 1968 did not constitute a hearing: After Judge O'Brien had refused to read the first of the 40 pages of said petition to vacate, and ended a most intemperate tirade, concluding "I do not propose to review the Supreme Court of the United States. Draw an order denying this Petition. Counsel, stand aside (addressing Hettleman)," the colloquy continued:

> "Hettleman: I want the order to show that there has been no oral argument.
>
> Judge O'Brien: Any way you want it.

(After respondents handed up their draft of the order to him, during the preparation of which Hettleman protested there was no hearing, they replied that they had withdrawn their motion to dismiss the petition to vacate.)

Hettleman: I would like the order to show that there was no hearing and no argument.

Judge O'Brien (signing the draft order): You presented the petition and there was a hearing.

Hettleman: This was a hearing?

Judge O'Brien: Yes."

Pp. 18-19 of the Pet. for Cert. show how the federal claims were raised in the main and supplemental briefs in the Illinois Supreme Court, and how disposed of. After the transfer to the Appellate Court, as the certified record will show, petitioners raised the federal claims and sought by might and main to have that Court pass on the merits, the appeal to it being a matter of right under Art. VI, sec. 7 of the Illinois Constitution. (p. 7 Pet.) That Court must have thought petitioners out of their mind since the incomplete September 22, 1970 order of transfer (App. C, p. 28a), did not show the Supreme Court had categorically denied respondents' motion to dismiss the appeal. (See pp. 3-4 of Pet. for Cert.)

**B. The non-federal question and substantiality of the federal questions.**

The September 22, 1970 Illinois Supreme Court order (App. B) can be construed as holding that, since the Civil Practice Act, sec. 72 was not complied with (App. J, pp. 35a-36a), a state statute, Judge O'Brien properly denied the petition to vacate. P. 9, Br. Opp. states, last paragraph, that Judge O'Brien denied the petition for non-compliance with said sec. 72. The above colloquy (At's main brief in No. 41807, p. 17, App. K, p. 40a) shows that Judge

O'Brien did not give said sec. 72 as his reason. This Court will decide for itself if there is a fair and substantial ground for the non-federal reason. Sec. 72 was not the basis for the relief prayed in the petition to vacate, and was mentioned only at the end to anticipate the red herring. Second, even if it applied, it was filed within 5 weeks of this Court's mandate being filed in the Cook County Circuit Court. The improperly rejected Hettleman Counteraffidavit to the Motion for summary judgment contained all sorts of pertinent matter that he had not considered on that motion. If he refused to read the first page of the petition to vacate, how could he tell if such matter had been read or seen by him before August 9, 1968? Lastly, sec. 72 is inapplicable if a judgment or decree is attacked for being void, which was the ground of the petition to vacate.

That leaves the question of how the Illinois Supreme Court could regard the many claims of denial of fundamental rights as insubstantial; e.g., the right to have a judge free from what Mr. Justice Rehnquist would call "motivational partiality"; the right to be immune from being a named defendant in a suit which the plaintiffs had no capacity to bring, thus subjecting Hettleman to harassment, expense (*Kerner* v. *Thompson*, 293 Ill. App. 434); the right to be immune from a suit founded on extrinsic fraud; the right to be free from an unauthorized repeal of the charter of a corporation of which petitioners are members and the impairment of contracts due to the Cook County state action in passing a statute on about November 26, 1965 authorizing its president to sign the contract is 65 CH 6865; the right to defend denied by the improper exclusion of the counteraffidavit; the right to an adjudication of their petition to vacate only after the same procedure ac-

corded all litigants similarly situated. In No. 46360, the Illinois Supreme Court must necessarily have decided that the latter constitutional right was insubstantial in ignoring the direct appeal under the 1971 Illinois Constitution, Art. VI, sec. 4 (Pet. Cert. 7).

**C. Fraud tolls statutes of limitations.**

Br. Opp. makes much of untimeliness. Point V (p. 4) answers itself. The non-final order was not reviewable when entered, but is reviewable when the final one is. The record is replete with fraud that could not be proved because O'Brien, J. denied trial: Liss' "fix"; Coman's advice to seize the Library (now a Judge); Concealment that members of the Executive Committee were appointed June 17, 1965 as Cook County's agents and voted November 12, 1965 to give the Library to their principals. On December 18, 1973, at a conference with Hettleman, Gardner told all present, including Biebel, both of whose names are on the Br. Opp., that he was a member of the Institute who attended the June 18, 1965 special meeting and voted against the Resolutions, and knows this was a "ripoff" in his words. Cook County provides the State's Attorney's budget. This Court should call on Gardner and Biebel to explain their imposition of this Court.

**Conclusion**

It is hoped that the smokescreen, called "Argument", will not avail to defeat this Court's review.

**Respectfully submitted,**

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